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Federal Register

Friday
April 25, 1986

Briefings on How To Use the Federal Register—
For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

Selected Subjects

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Selected Subjects

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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How To Cite This Publication: Use the volume number and the page number. Example: 51 FR 12345.

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 15; at 9 am.

WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.

RESERVATIONS: Laurence Davey, 202-523-3517

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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AWP-5]

Transition Area Revocation; Kaanapali, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to revoke the 700 foot transition area currently designated for Kaanapali, Hawaii. This will return the associated 700 foot area to a 1,200 foot transition area. The Kaanapali, Hawaii, Airport has been permanently closed.

EFFECTIVE DATE: 0901 UTC, July 3, 1986.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to Part 71.181 of the Federal Aviation Regulations revokes the transition area currently designated for Kaanapali, Hawaii, and returns the associated 700 foot area to a 1,200 foot area. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor amendment in which the public would not be particularly interested. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition Areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71. 181 is amended as follows:

Kaanapali, HI—[Removed]

Issued in Los Angeles, California, on April 17, 1986.

Lloyd Golden,

Acting Air Traffic Manager, Western Pacific Region.

[FR Doc. 86-9253 Filed 4-24-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 86-AWP-4]

Amended Control Zone Hours, Saipan, Mariana Islands, CM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; Request for comments.

SUMMARY: There has been a significant increase in instrument flight rules (IFR) traffic during all hours to Saipan International Airport, Mariana Islands, CM. This amendment will amend the effective hours for the Saipan control zone and provide controlled airspace for all IFR traffic. The Saipan control zone will be a full time control zone.

DATES: Effective date—0901 UTC, July 3, 1986.

Comments must be received on or before June 16, 1986.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP-520, Docket No. 86-AWP-4, Air Traffic Division, P.O. Box 90027, WWPC, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division, at the above address.

FOR FURTHER INFORMATION CONTACT: Frank T. Torikai, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90260; telephone (213) 297-1649.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves changing the Saipan, Mariana Islands, CM, control zone from a part-time to a full time control zone, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental,

and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the effective hours of the Saipan, Mariana Islands, CM, control zone. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6B dated January 2, 1986.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the hours of the Saipan control zone. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this amendment effective coincident with the next charting date.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is/are (further) amended as follows:

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

Part 71—[Amended]

§ 71.171 [Amended]

2. § 71.171 is amended as follows:

Saipan Island, Mariana Islands, CM—[Amended]

Within a 5-mile radius of Saipan International Airport (lat. 15°07'13" N., long. 145°43'49" E.), and within 3 miles each side of the Saipan RBN (lat. 15°06'46" N., long. 145°42'42" E.) 265° bearing, extending from the 5-mile radius zone to 8.5 miles west of the RBN, and within 2 miles each side of the extended centerline of the east/west runway extending from the 5-mile radius zone to 7.5 miles east of Saipan International Airport.

Issued in Los Angeles, California, on April 17, 1986.

B. Keith Potts,

Acting Director, Western-Pacific Region.

[FR Doc. 86-9252 Filed 4-24-86; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 24971; Amdt. No. 1319]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number. This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances

which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard Instrument, Incorporation by reference, Aviation safety.

Issued in Washington, D.C. on April 18, 1986.

John S. Kern,

Director of Flight Standards.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.M.T. on the dates specified, as follows:

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

PART 97—[AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV, SIAPS; and § 97.35 COPTER SIAPs, identified as follows:

. . . effective 3 July 1986

Pago Pago, American Samoa—Pago Pago Intl. ILS/DME RWY 5, Amdt. 12
Walnut Ridge, AR—Walnut Ridge Regional, NDB RWY 17, Amdt. 2, CANCELLED
Walnut Ridge, AR—Walnut Ridge Regional, NDB RWY 17, Orig

. . . effective 5 June 1986

Huntsville, AL—Huntsville-Madison Co ARPT-Carl T Jones Field, NDB RWY 18R, Amdt. 11
Huntsville, AL—Huntsville-Madison Co ARPT-Carl T Jones Field, ILS RWY 18R, Amdt. 18
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Key West, FL—Key West Intl, VOR-B, Amdt. 8
Key West, FL—Key West Intl, NDB-A, Amdt. 12
Orlando, FL—Orlando Executive, VOR RWY 13, Amdt. 13
Tallahassee, FL—Tallahassee Muni, ILS RWY 27L, Amdt. 2
Shelbyville, IL—Shelby County, NDB-A, Amdt. 1
Bedford, IN—Virgil I Grissom Muni, VOR/DME RWY 13, Admt. 7
Bedford, IN—Virgil I Grissom Muni, VOR/DME RWY 31, Amdt. 6
Bedford, IN—Virgil I Grissom Muni, NDB RWY 13, Amdt. 6
Bedford, IN—Virgil I Grissom Muni, NDB RWY 31, Amdt. 6
Rochester, IN—Fulton County, NDB RWY 29, Amdt. 8
Seymour, IN—Freeman Muni, LOC RWY 4, Amdt. 1
Seymour, IN—Freeman Muni, NDB RWY 4, Amdt. 1
Auburn-Lewiston, ME—Auburn-Lewiston Muni, ILS RWY 4, Amdt. 5
Charlevoix, MI—Charlevoix Muni, NDB RWY 8, Amdt. 8
Charlevoix, MI—Charlevoix Muni, NDB RWY 26, Amdt. 9
Cheboygan, MI—Cheboygan City-County, VOR RWY 9, Amdt. 5
Detroit, MI—Detroit City, ILS RWY 33, Amdt. 11
Detroit, MI—Willow Run, VOR RWY 5R, Amdt. 9
Detroit, MI—Willow Run, NDB RWY 5R, Amdt. 8
Detroit, MI—Willow Run, ILS RWY 5R, Amdt. 11
Detroit, MI—Willow Run, ILS RWY 23L, Amdt. 3
Detroit, MI—Willow Run, RADAR-1, Amdt. 6
Pellston, MI—Emmet County, VOR RWY 23, Amdt. 12
Pellston, MI—Emmet County, VOR/DME RWY 5, Amdt. 7
Pellston, MI—Emmet County, ILS RWY 32, Amdt. 7
Utica, MI—Berz-Macomb, NDB RWY 22, Amdt. 3
Binghamton, NY—Edwin A Link Field-Boome County, VOR RWY 10, Amdt. 6
Binghamton, NY—Edwin A Link Field-Boome County, VOR/DME RWY 28, Amdt. 9
Binghamton, NY—Edwin A Link Field-Boome County, ILS RWY 16, Amdt. 2
Binghamton, NY—Edwin A Link Field-Boome County, ILS RWY 34, Amdt. 21
Binghamton, NY—Edwin A Link Field-Boome County, RADAR-1, Amdt. 7
Niagara Falls, NY—Niagara Falls Intl, LOC BC RWY 10L, Amdt. 6, CANCELLED
Watertown, NY—Watertown New York Intl, VOR RWY 7, Amdt. 13
Watertown, NY—Watertown New York Intl, ILS RWY 7, Amdt. 5
Lexington, NC—Lexington Muni, NDB RWY 8, Amdt. 4
Lorain/Elyria, OH—Lorain County Regional, VOR RWY 7, Amdt. 11
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Aberdeen, SD—Aberdeen Regional, VOR/DME or TACAN RWY 13, Amdt. 10
Aberdeen, SD—Aberdeen Regional, LOC/DME BC RWY 13, Amdt. 8
Aberdeen, SD—Aberdeen Regional, NDB RWY 31, Amdt. 8
Aberdeen, SD—Aberdeen Regional, ILS RWY 31, Amdt. 10
Huron, SD—Huron Regional, VOR RWY 12, Amdt. 19
Huron, SD—Huron Regional, LOC/DME BC RWY 30, Amdt. 9
Huron, SD—Huron Regional, NDB RWY 12, Amdt. 18
Huron, SD—Huron Regional, ILS RWY 12, Amdt. 7
Watertown, SD—Watertown Muni, VOR or TACAN RWY 17, Amdt. 13
Watertown, SD—Watertown Muni, VOR/DME or TACAN RWY 35, Amdt. 9
Watertown, SD—Watertown Muni, LOC/DME BC RWY 17, Amdt. 7
Watertown, SD—Watertown Muni, NDB RWY 35, Amdt. 5
Dallas, TX—Dallas-Love Field, LOC BC RWY 31R, Amdt. 26, CANCELLED
Staunton-Waynesboro/Harrisonburg, VA—Shenandoah Valley, NDB RWY 4, Amdt. 8
Staunton-Waynesboro/Harrisonburg, VA—Shenandoah Valley, ILS RWY 4, Amdt. 6

Berkeley Springs, WV—Potomac Airpark, VOR RWY 29, Amdt. 4
Prairie Du Chien, WI—Prairie Du Chien Muni, VOR/DME RWY 29, Amdt. 5

. . . effective 16 April 1986

Raleigh-Durham, NC—Raleigh Durham, RADAR-1, Amdt. 4

. . . effective 9 April 1986

Afton, OK—Shangri-La, RNAV RWY 17, Amdt. 1
Afton, OK—Shangri-La, RNAV RWY 35, Amdt. 1
Grove, OK—Grove Muni, RNAV RWY 18, Amdt. 2
Grove, OK—Grove Muni, RNAV RWY 36, Amdt. 2
Bluefield, WV—Mercer County, ILS RWY 23, Amdt. 9

. . . effective 8 April 1986

Raleigh-Durham, NC—Raleigh-Durham, ILS RWY 23R, Amdt. 1

The FAA published an Amendment in Docket No. 24960, Amdt. No. 1318, to Part 97 of the Federal Aviation Regulations (VOL 51 FR No. 70 Page 12515; dated 11 APR 86) under § 97.35, effective 8 MAY 1986, which is hereby amended as follows:

ASTORIA, OR—PORT OF ASTORIA, COPTER ILS/DME 255–B, ORIG., IS RESCINDED.

[FR Doc. 86–9251 Filed 4–24–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage From New Animal Drugs Not Subject to Certification; Gentamicin Sulfate Injection

AGENCY: Food and Drug Administration HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Med-Tech, Inc., providing for use of gentamicin sulfate injection in the treatment of urinary tract infections (cystitis) in dogs.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1963.

SUPPLEMENTARY INFORMATION: Med-Tech, Inc., P.O. Box 338, Elwood, KS 66024, filed NADA 137–310 for gentamicin sulfate injection (50 milligrams per milliliter). The drug is for intramuscular or subcutaneous injection in dogs for the treatment of urinary tract infections (cystitis) caused by *Proteus mirabilis, Escherichia coli,* and *Staphylococcus aureus.* The NADA is approved and the regulations amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FROM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. Section 522.1044 is amended by adding new paragraphs (b)(3) and (d)(5) to read as follows:

§ 522.1044 Gentamicin sulfate injection.

* * * * *

(b) * * *

(3) See No. 013983 for use of 50 milligram-per-milliliter solution in dogs as in paragraph (d)(5) of this section.

* * * * *

(d) * * *

(5) *Dogs.*—(i) *Amount.* 2 milligrams of gentamicin per pound of body weight, twice daily on the first day, then once daily.

(ii) *Indications for use.* For use in the treatment of urinary tract infections (cystitis) caused by *Proteus mirabilis, Escherichia coli,* and *Staphylococcus aureus.*

(iii) *Limitations.* Administer intramuscularly or subcutaneously. If no improvement is seen after 3 days, treatment should be discontinued and the diagnosis reevaluated. Treatment not to exceed 7 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 21, 1986.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 86–9267 Filed 4–24–86; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Parts 601, 610, 620, 630, 640, 650, 660, and 680

[Docket No. 86N–0113]

Biological Products; Corrections and Technical Amendments

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on biological products to correct editorial and typographical errors and to make minor, noncontroversial, technical revisions.

DATES: Effective April 25, 1986; written comments by May 27, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph G. Wilczek, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

SUPPLEMENTARY INFORMATION: FDA is amending certain of its biological products regulations to correct editorial and typographical errors. FDA is also making certain revisions in § 610.53 in the table of dating periods for licensed biological products. These changes represent current practice with respect to the storage periods for various products. FDA has accepted these periods in submitted license applications.

Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest (5 U.S.C. 553 (b)(B) and (d)). This final rule, therefore, is

effective April 25, 1986. However, interested persons may, on or before May 27, 1986, submit written comments to the Dockets Management Branch (address above).

FDA has analyzed the regulatory impact of this rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The rule amends the regulations on biological products to correct editorial and typographical errors and to make minor technical revisions. Therefore, the agency has determined that the rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

The agency has determined under 21 CFR 25.24(a)(9) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 601

Biologics.

21 CFR Part 610

Biologics; Labeling; Reporting and recordkeeping requirements.

21 CFR Part 620

Biologics; Reporting and recordkeeping requirements.

21 CFR Part 630

Biologics.

21 CFR Part 640

Blood; Labeling; Reporting and recordkeeping requirements.

21 CFR Part 650

Biologics.

21 CFR Part 660

Biologics; Labeling.

21 CFR Part 680

Biologics; Blood.

Therefore, under the Public Health Service Act and under the authority delegated to the Commissioner of Food and Drugs, Parts 601, 610, 620, 630, 640, 650, 660, and 680 are amended as follows:

PART 601—LICENSING

1. The authority citation for 21 CFR Part 601 is revised to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

§ 601.25 [Amended]

2. Section 601.25 *Review procedures to determine that licensed biological products are safe, effective, and not misbranded under prescribed, recommended, or suggested conditions of use* is amended in paragraph (d)(2) by changing "§ 314.111(a)(5)(ii)" to read "§ 314.126."

PART 610—GENERAL BIOLOGICAL PRODUCT STANDARDS

3. The authority citation for 21 CFR Part 610 is revised to read as follows:

Authority: Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262); 21 CFR 5.10.

§ 610.9 [Amended]

4. In § 610.9 *Equivalent methods and processes,* in paragraph (b) changing "20205" to read "20892."

§ 610.11 [Amended]

5. In § 610.11 *General safety,* in the introductory paragraph, in the introductory text of paragraph (c), (c)(2), and (3) by changing the reference "paragraph (f) of this section" to read "§ 610.9" wherever it appears.

§ 610.15 [Amended]

6. In § 610.15 *Constituent materials,* in the introductory text of praragraph (a) by revising in the second sentence the word "use" to read "used," and in the third sentence by changing "in 50 percent or more glycerin" to read "in 50 percent or more volume in volume (v/v) glycerin."

§ 610.40 [Amended]

7. In § 610.40 *Test for hepatitis B surface antigen,* paragraphs (b)(4), (d)(1)(v), and (d)(2)(iv), by changing "20205" to read "20892."

8. Section 610.53 is amended in paragraph (c) by revising the table to read as follows:

§ 610.53 Dating periods for licensed biological products.

* * * * *

(c) * * *

Product	Manufacturer's storage period 1 to 5 °C (unless otherwise stated)	Manufacturer's storage period 0 °C or colder (unless otherwise stated)	Dating period after leaving manufacturer's storage when stored at 2 to 8 °C (unless otherwise stated)
A	B	C	D
Adenovirus Vaccine Live Oral	6 months	Not applicable	6 months.
Albumin (Human)	3 years	do	(a) 5 years.
	do	do	(b) 3 years, provided labeling recommends storage at room temperature, no warmer than 37 °C.
	Not applicable	do	(c) 10 years, if in a hermetically sealed metal container and provided labeling recommends storage between 2 and 8 °C.
Allergenic Extracts labeled "No U.S. Standard of Potency":			
1. With 50 percent or more glycerin	3 years	do	3 years.
2. With less than 50 percent glycerin	18 months	do	18 months.
3. Products for which cold storage conditions are inappropriate	Not applicable	do	18 months (from date of manufacture), provided labeling recommends storage at 30 °C or colder.
4. Powders and tablets	do	do	5 years (from date of manufacture), provided labeling recommends storage at 30 °C or colder.
5. Preeze-dried products:			
a. Unreconstituted	do	do	4 years (from date of manufacture).
b. Reconstituted	do	do	18 months (cannot exceed 4-year unreconstituted dating period plus an additional 12 months).
Allergenic Extracts, Alum Precipitated labeled "No U.S. Standard of Potency".	18 months	do	18 months.
Anthrax Vaccine Adsorbed	2 years	do	1 year.
Antibody to Hepatitis B Surface Antigen:			
1. Antibody to Hepatitis B Surface Antigen	6 months	do	6 months.
2. Lyophilized coated red blood cells	do	do	Do.
3. Enzyme conjugated products	do	do	Do.
Iodinated (^{125}I) products	Not applicable	do	45 days (from date of manufacture).
Antihemophilic Factor (Human)	do	do	1 year (from date of manufacture).

Product	Manufacturer's storage period 1 to 5 °C (unless otherwise stated)	Manufacturer's storage period 0 °C or colder (unless otherwise stated)	Dating period after leaving manufacturer's storage when stored at 2 to 8 °C (unless otherwise stated)
A	B	C	D
Anti-Human Globulin Liquid	do	do	2 years.
Anti-Inhibitor Coagulant Complex	do	do	Do.
Antirabies Serum	1 year	do	Do.
Antivenin (*Crotalidae*) Polyvalent	do	do	5 years with an initial 10 percent excess of potency, provided labeling recommends storage at 37 °C or colder.
Antivenin (*Latrodectus Mactans*)	do	do	5 years with an initial 10 percent excess of potency.
Antivenin (*Micurus fulvius*)	do	do	Do.
Asparaginase	Not applicable	do	18 months from the date of the last valid potency test.
BCG Vaccine	1 year	Not applicable	6 months.
Blood Grouping Serums			
1. Liquid	Not applicable	Not applicable	2 years.
2. Dried	1 year	2 years	5 years.
Blood Group Substance AB	do	do	2 years.
Blood Group Substance A	do	do	Do.
Blood Group Substance B	do	do	Do.
Botulism Antitoxin	do	Not applicable	5 years with an initial 20 percent excess of potency.
Cholera Vaccine	do	do	18 months.
Coccidioidin	do	do	3 years.
Collagenase	Not applicable	do	4 years (from date of manufacture), provided labeling recommends storage at 37 °C or colder.
Cryoprecipitated AFH	do	do	12 months from the date of collection of source blood, provided labeling recommends storage at −18 °C or colder.
Diphtheria Antitoxin:			
1. Liquid	1 year	do	5 years with an initial 20 percent excess of potency.
2. Dried	do	2 years	5 years with an initial 10 percent excess of potency.
Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed	do	Not applicable	18 months.
Diphtheria and Tetanus Toxoids, Adsorbed	do	do	2 years.
Diphtheria Toxin for Schick Test	do	do	1 year.
Diphtheria Toxoid	do	do	2 years.
Diphtheria Toxoid Adsorbed	do	2 years	Do.
Diphtheria Toxoid-Schick Test Control	Not applicable	Not applicable	1 year.
Factor IX Complex	do	do	1 year (from date of manufacture).
Fibrinolysin (Human)	1 year	2 years	2 years.
Fibrinolysin and Desoxyribonuclease Combined (Bovine)	do	do	3 years, provided labeling recommends storage at 30 °C or colder.
Fibrinolysin and Desoxyribonuclease Combined (Bovine) with Chloramphenicol.	do	do	Do.
Hepatitis B Surface Antigen:			
1. Unlyophilized coated red blood cells	Not applicable	do	14 days (from date of manufacture).
2. Iodinated (^{125}I) product	do	do	45 days (from date of manufacture).
3. Enzyme conjugated product	6 months	do	6 months.
Histoplasmin	1 year	Not applicable	2 years.
Immunoglobulins:			
1. Hepatitis B Immune Globulin (Human)	Not applicable	2 year	1 year.
2. Immune Globulin (Human)	3 years	do	3 years.
3. Immune Globulin Intravenous (Human)	Not applicable	do	1 year.
4. Lymphocyte Immune Globulin, Anti-Thymocyte Globulin (Equine)	do	Not applicable	2 years.
5. Pertussis Immune Globulin (Human)	3 years	do	3 years from date the dried or frozen bulk product is placed in final solution.
6. Rabies Immune Globulin (Human)	1 years	do	1 year.
7. Rh_o(D) Immune Globulin (Human)	6 months	do	6 months.
8. Tetanus Immune Globulin (Human)	1 year	do	3 years with an initial 10 percent excess of potency.
9. Vaccinia Immune Globulin (Human)	3 years	do	3 years.
10. Varicella-Zoster Immune Globulin (Human)	Not applicable	do	1 year.
Hepatitis B Vaccine	2 years at 12 to 8 °C	Not applicable	3 years.
Influenza Virus Vaccine	1 year	do	18 months.
Limulus Amebocyte Lysate	Not applicable	Not applicable	18 months (from date of manufacture).
Measles, Mumps, and Rubella Virus Vaccine Live	do	1 year (−20 °C or colder).	1 year.
Measles and Mumps Virus Vaccine Live	do	do	1 year.
Measles and Rubella Virus Vaccine Live	do	do	Do.
Measles Live and Smallpox Vaccine	Not applicable	do	1 year (from date of manufacture).
Measles Virus Vaccine Live	do	do	1 year.
Meningococcal Polysaccharide Vaccine Group A:			
1. Final bulk powder	do	2 years (−20 °C or colder).	Not applicable.
2. Final container	Not applicable	3 years (−20 °C or colder).	2 years.
Meningococcal Polysaccharide Vaccine Group C:			
1. Final bulk powder	do	2 years (−20 °C or colder).	Not applicable.
2. Final container	do	3 years (−20 °C or colder).	2 years.
Meningococcal Polysaccharide Vaccine Groups A and C combined:			
1. Final bulk powder	do	2 years (−20 °C or colder).	Not applicable.
2. Final container	do	3 years (−20 °C or colder).	2 years.
Meningococcal Polysaccharide Vaccine Groups A, C, Y, and W135 combined:			
1. Final bulk power	do	2 years (−20 °C or colder).	Not applicable.
2. Final container	do	3 years (−20 °C or colder).	2 years.
Mumps Skin Test Antigen	6 months	Not applicable	18 months.
Mumps Virus Vaccine Live	Not applicable	1 year (−20 °C or colder).	1 year.
Normal Horse Serum	1 year	2 years	5 years.
Pertussis Vaccine	do	Not applicable	18 months.

Product A	Manufacturer's storage period 1 to 5 °C (unless otherwise stated) B	Manufacturer's storage period 0 °C or colder (unless otherwise stated) C	Dating period after leaving manufacturer's storage when stored at 2 to 8 °C (unless otherwise stated) D
Pertussis Vaccine Adsorbed	do	do	Do.
Plague Vaccine	do	do	Do.
Plasma products:			
1. Fresh Frozen Plasma	Not applicable	do	1 year from date of collection of source blood (−18 °C or colder).
2. Liquid Plasma	do	do	(a) 26 days from date of collection of source blood (between 1 and 6 °C). (b) 40 days from date of collection of source blood only when CPDA-1 solution is used as the anticoagulant (between 1 and 6 °C).
3. Plasma	do	do	5 years from date of collection of source blood (−18 °C or colder).
4. Platelet Rich Plasma	do	do	72 hours from time of collection of source blood, provided labeling recommends storage (20 to 24 °C or between 1 and 6 °C). 5 days if certain approved containers are used (20 to 24 °C).
5. Source Leukocytes	do	do	In lieu of expiration date, the collection date shall appear on the label.
6. Source Plasma	do	do	10 years (at the recommended storage temperature stated on the label).
7. Therapeutic Exchange Plasma	do	do	10 years.
Plasma Protein Fraction (Human)	1 year	do	(a) 5 years. (b) 3 years provided labeling recommends storage at room temperature, no warmer than 30 °C).
Platelets	Not applicable	do	72 hours from time of collection of source blood, provided labeling recommends storage at 20 to 24 °C or between 1 and 6 °C. 5 days if certain approved containers are used (20 to 24 °C).
Pneumococcal Vaccine Polyvalent:			
1. Final bulk powder	do	24 months after potency assay (−20 °C or colder).	Not applicable.
2. Final container	do	Not applicable	2 years (from date of manufacture).
Poliovirus Vaccine Inactivated	1 year	do	1 year.
Poliovirus Vaccine Live Oral Trivalent:			
1. Frozen	Not applicable	1 year (−10 °C or colder).	1 year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	30 days, provided labeling recommends storage between 2 and 8 °C and container has been unopened.
Poliovirus Vaccine Live Oral Type I:			
1. Frozen	do	1 year (−10 °C or colder).	1 year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	30 days, provided labeling recommends storage between 2 and 8 °C and container has been unopened.
Poliovirus Vaccine Live Oral Type II:			
1. Frozen	do	1 year (−10 °C or colder).	1 year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	30 days, provided labeling recommends storage between 2 and 8 °C and container has been unopened.
Poliovirus Vaccine Live Oral Type III:			
1. Frozen	do	1 year (−10 °C or colder).	1 year, provided labeling recommends storage at a temperature which will maintain ice continuously in a solid state.
2. Liquid	do	Not applicable	30 days, provided labeling recommends storage between 2 and 8 °C and container has been unopened.
Polyvalent bacterial antigens with "No U.S. Standard of Potency" liquid.	1 year	do	18 months.
Polyvalent bacterial vaccines with "No U.S. Standard of Potency" liquid.	do	do	Do.
Rabies Vaccine:			
1. Dried	do	2 years	Do.
2. Liquid	3 months	Not applicable	6 months.
Reagent Red Blood Cells	Not applicable	do	35 days from earliest date of collection.
ACD Red Blood Cells	do	do	(a) 21 days from date of collection of source blood, provided labeling recommends storage between 1 and 6 °C and the hermetic seal is not broken during processing. (b) 24 hours after plasma removal, provided labeling recommends storage between 1 and 6 °C and the hermetic seal is broken during processing.
CPD Red Blood Cells	do	do	(a) 21 days from date of collection of source blood, provided labeling recommends storage between 1 and 6 °C and the hermetic seal is not broken during processing. (b) 24 hours after plasma removal, provided labeling recommends storage between 1 and 6 °C and the hermetic seal is broken during processing.
CPDA-1 Red Blood Cells	do	do	(a) 35 days from date of collection of source blood, provided labeling recommends storage between 1 and 6 °C and the hermetic seal is not broken during processing. (b) 24 hours after plasma removal, provided labeling recommends storage between 1 and 6 °C and the hermetic seal is broken during processing.
Red Blood Cells Deglycerolized	do	do	24 hours after removal from storage at −65 °C or colder, provided labeling recommends storage between 1 and 6 °C.
Red Blood Cells Frozen	do	do	3 years from date of collection of source blood, provided labeling recommends storage at −65 °C or colder.
Rubella and Mumps Virus Vaccine Live	do	1 year (−20 °C or colder).	1 year.
Rubella Virus Vaccine Live	do	°C.	Do.
Skin Test Antigens for Cellular Hypersensitivity	6 months	Not applicable	Do.

—Continued

Product	Manufacturer's storage period 1 to 5 °C (unless otherwise stated)	Manufacturer's storage period 0 °C or colder (unless otherwise stated)	Dating period after leaving manufacturer's storage when stored at 2 to 8 °C (unless otherwise stated)
A	B	C	D
Smallpox Vaccine:			
1. Liquid	Not applicable	9 months (−10 °C or colder, if product is maintained as glycerinated or equivalent vaccine in bulk or final containers).	3 months, provided labeling recommends storage at 0 °C or colder.
3. Dried	6 months	Not applicable	18 months.
Streptokinase	Not applicable	do	Do.
Tetanus and Diphtheria Toxoids Adsorbed for Adult Use	1 year	do	2 years.
Tetanus Antitoxin:			
1. Liquid	do	do	5 years with an initial 20 percent excess or potency.
2. Dried	do	2 years	5 years with an initial 10 percent excess or potency.
Tetanus Toxoid	do	Not applicable	2 years.
Tetanus Toxoid Adsorbed	do	do	Do.
Thrombin	do	2 year	3 years.
Thrombin Impregnated Pad	Not applicable	Not applicable	1 year, or 6 months at 20 to 24 °C.
Tuberculin:			
1. Purified Protein Derivative, diluted	6 months	do	1 year.
2. Old or Purified Protein Derivative dried on multiple puncture device.	1 year (not to exceed 30 °C; do not refrigerate).	do	2 years, provided labeling recommends storage at a temperature not to exceed 30 °C. Do not refrigerate.
3. Old on multiple puncture device	do	do	Do.
Typhoid Vaccine	1 year	do	18 months.
ACD Whole Blood	Not applicable	do	21 days from date of collection, provided labeling recommends storage between 1 and 6 °C.
CPD Whole Blood	do	do	Do.
CPDA-1 Whole Blood	do	do	35 days from date of collection, provided labeling recommends storage between 1 and 6 °C.
Heparin Whole Blood	do	do	48 hours from date of collection, provided labeling recommends storage between 1 and 6 °C.
Yellow Fever Vaccine	do	1 year (−20 °C or colder).	1 year, provided labeling recommends storage at 5 °C or colder.

PART 620—ADDITIONAL STANDARDS FOR BACTERIAL PRODUCTS

9. The authority citation for 21 CFR Part 620 is revised to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

§ 620.6 [Amended]

10. In § 620.6 *General requirements,* in paragraph (h) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda, MD 20892."

§ 620.12 [Amended]

11. In § 620.12 *U.S. Standard preparations,* in the introductory paragraph by removing the word "National" and by changing "20205" to read "20892."

§ 620.14 [Amended]

12. In § 620.14 *General requirements,* in the introductory text of paragraph (c) by removing the word "National" and by changing "20205" to read "20892."

§ 620.24 [Amended]

13. In § 620.24 *General requirements,* in the introductory text of paragraph (c) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda, MD 20892."

§ 620.35 [Amended]

14. In § 620.35 *General requirements,* in the introductory text of paragraph (e) by changing "20205" to read "20892."

§ 620.43 [Amended]

15. In § 620.43 *Reference BCG Vaccine,* by changing "20205" to read "20892."

§ 620.48 [Amended]

16. In § 620.48 *Samples; protocols; official release,* in the introductory text of paragraph (a) and in (a)(2) by changing "20205" to read "20892."

PART 630—ADDITIONAL STANDARDS FOR VIRAL VACCINES

17. The authority citation for 21 CFR Part 630 is revised to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

§ 630.5 [Amended]

18. In § 630.5 *General requirements,* in the introductory text of paragraph (c) by changing "20205" to read "20892."

§ 630.16 [Amended]

19. In § 630.16 *Test for safety,* in paragraph (a)(6) by revising in the first sentence the phrase "At least 500 doses of 50 ml." to read "At least 500 doses or 50 mL."

§ 630.17 [Amended]

20. In § 630.17 *General requirements,* in the introductory text of paragraph (e) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda MD 20892."

§ 630.36 [Amended]

21. In § 630.36 *General requirements,* in the introductory text of paragraph (h) by removing the phrase "Bldg. 29A" and by changing "20205" to read "20892."

§ 630.56 [Amended]

22. In § 630.56 *General requirements,* in the introductory text of paragraph (f) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda, MD 20892."

§ 630.66 [Amended]

23. In § 630.66 *General requirements,* in the introductory text of paragraph (e) by removing the phrase "Bldg. 29A" and by changing "20205" to read "20892."

§ 630.75 [Amended]

24. In § 630.75 *General requirements,* in the introductory text of paragraph (d) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda, MD 20892."

§ 630.86 [Amended]

25. In § 630.86 *General requirements,* in the introductory text of paragraph (e) by removing the phrase "Bldg. 29A" and by changing "20205" to read "20892."

PART 640—ADDITIONAL STANDARDS FOR HUMAN BLOOD AND BLOOD PRODUCTS

26. The authority citation for 21 CFR Part 640 continues to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended; 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

§ 640.3 [Amended]

27. In § 640.3 *Suitability of donor,* in the introductory text of paragraphs (b) and (c), and paragraphs (d) and (e) by changing "Whole Blood (Human)" to read "Whole Blood."

§ 640.101 [Amended]

28. In § 640.101 *General requirements,* in the introductory text of paragraph (f) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda, MD 20892."

§ 640.111 [Amended]

29. In § 640.111 *General requirements,* in the introductory text of paragraph (g) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda, MD 20892."

PART 650—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR DERMAL TESTS

30. The authority citation for 21 CFR Part 650 is revised to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended; 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

§ 650.11 [Amended]

31. In § 650.11 *General requirements,* in the introductory text of paragraph (c) by changing "Building 29A, 9000 Rockville Pike, Bethesda, MD 20205" to read "8800 Rockville Pike, Bethesda, MD 20892."

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

32. The authority citation for 21 CFR Part 660 is revised to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

§ 660.6 [Amended]

33. In § 660.6 *Samples; protocols; official release,* in paragraph (a)(2) by changing "20205" to read "20892."

§ 660.22 [Amended]

34. In § 660.22 *Reference preparations* by changing "20205" to read "20892."

§ 660.29 [Amended]

35. In § 660.29 *Samples; protocols; official release,* in the introductory text of paragraph (a) by changing "20205" to read "20892."

§ 660.36 [Amended]

36. In § 660.36 *Samples and protocols,* in the introductory text of paragraph (a) by changing "20205" to read "20892."

§ 660.42 [Amended]

37. In § 660.42 *Reference panel* by changing "20205" to read "20892."

§ 660.46 [Amended]

38. In § 660.46 *Samples; protocols; official release,* in paragraph (a)(2) by changing "20205" to read "20892."

§ 660.52 [Amended]

39. In § 660.52 *Reference preparations* by changing "20205" to read "20892."

§ 660.53 [Amended]

40. In § 660.53 *Controls for serological procedures* by changing "20205" to read "20892."

§ 660.54 [Amended]

41. In § 660.54 *Potency tests, specificity tests, tests for heterospecific antibodies, and additional tests for nonspecific properties,* in the introductory paragraph by changing "20205" to read "20892."

§ 660.101 [Amended]

42. In § 650.101 *U.S. Standard/ Reference Preparations,* in the introductory paragraph by changing "20205" to read "20892."

§ 660.105 [Amended]

43. In § 660.105 *Samples and protocols: official release,* in the introductory text of paragraph (a) by changing "20205" to read "20892."

PART 680—ADDITIONAL STANDARDS FOR MISCELLANEOUS PRODUCTS

44. The authority citation for 21 CFR Part 680 is revised to read as follows:

Authority: Secs. 215, 351, 58 Stat. 690 as amended, 702 as amended (42 U.S.C. 216, 262); 21 CFR 5.10.

§ 680.4 [Amended]

45. In § 680.4 *Short ragweed pollen extracts,* in the introductory text of paragraph (c)(1) by removing the phrase "Building 29A" and by changing "20205" to read "20892."

§ 680.21 [Amended]

46. In § 680.21 *Reference preparations* by changing "20205" to read "20892."

§ 680.26 [Amended]

47. In § 680.26 *Samples; protocols; official release* by removing the phrase "Building 29A" and by changing "20205" to read "20892."

Dated: April 17, 1986.

John M. Taylor,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-9119 Filed 4-24-86; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 812, 881, 882, and 912

[Docket No. R-85-974; FR-1588]

Restriction on Use of Assisted Housing

Correction

In FR Doc. 86-7050 beginning on page 11198 in the issue of Tuesday, April 1, 1986, make the following corrections:

§ 200.180 [Corrected]

1. On page 11214, third column, in § 200.180(a), seventh line, "1985" should read "1965".

§ 200.182 [Corrected]

2. On page 11215, third column, in § 200.182(a)(5)(i)(A)(*1*), second line, insert "(i)" between "(5)" and "(B)". In § 200.182(a)(5)(i)(A)(*2*), last line, "§ 200.182" should read "§ 200.183".

§ 812.5 [Corrected]

3. On page 11220, third column, in § 812.5, paragraph "(4)(1)" should read "(4)(i)". In § 812.5(a)(4)(i)(A), second line, "PHA.g" should read "PHA.".

4. On page 11221, third column, seventh line, "250-0204" should read "2502-0204".

§ 812.7 [Corrected]

5. On page 11222, first column, in § 812.7(a)(1)(ii)(B), eighth line, "follow" should read "allow".

§ 881.504 [Corrected]

6. On page 11225, first column, in § 881.504(e), eighth line, "than" should read "then".

§ 882.209 [Corrected]

7. On page 11226, first column, in § 882.209(a)(7), thirteenth line, "states" should read "stated".

§ 912.7 [Corrected]

8. On page 11230, third column, in § 912.7(a)(2)(ii), second line, "(d)(2)(i)" should read "(a)(2)(i)".

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1131-86]

Organization of the Department of Justice

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule will amend 28 CFR 0.111 by striking the existing language in paragraph (i) and adding a new paragraph to reflect a delegation of authority to the Director of the United States Marshals Service. On March 6, 1984 and May 24, 1985, the Director was delegated the authority to maintain, safekeep, and dispose of assets forfeited to the United States, and to administer the Department of Justice Asset Forfeiture Fund.

EFFECTIVE DATE: April 10, 1986.

FOR FURTHER INFORMATION CONTACT: Gerald M. Auerbach, General Counsel, United States Marshals Service, McLean, Virginia; telephone No. (703) 285-1004, which is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Attorney General has delegated certain authority over asset forfeiture matters to the Director of the United States Marshals Service. This rule will amend 28 CFR 0.111 to add new language to paragraph (i) reflecting this delegation in order to alert the public to the present organizational structure of the Department.

This regulation is not a major rule within the meaning of Executive Order 12291, 3 CFR 127 (1982 Comp.) because it imposes no new requirements. It does not have an impact on small businesses and, therefore, is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612. Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is not necessary because this rule relates to agency organization and management.

List of Subjects in 28 CFR Part 0

Organization and functions (Government agencies), Assets, Forfeiture.

By virtue of the authority vested in me by 28 U.S.C. 509, 510, 524, 569, and 5 U.S.C. 301, Subpart T of Part 0 of Title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart T continues to read as follows:

Authority: 28 U.S.C. 509, 510, 524, 569; 5 U.S.C. 301.

2. In Section 0.111, paragraph (i) is revised to read as follows:

§ 0.111 General functions.

* * * * *

(i) Maintenance of custody, management control, and disposal of property and money seized or forfeited pursuant to any law enforced or administered by the Department of Justice, when the property is seized by the United States Marshals Service or delivered to the United States Marshals Service in accordance with regulations; and administer the Department of Justice Asset Forfeiture Fund.

* * * * *

Dated: April 10, 1986.

Edwin Meese III,

Attorney General.

[FR Doc. 86-9161 Filed 4-24-86; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules; Advisory Opinion Requests by State Agencies and Courts

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: In response to requests that the Board facilitate the procedure for issuing an advisory opinion to a court or state agency on assertion of jurisdiction over an employing enterprise, the Board is amending §§ 102.98 and 102.99 to allow a court or state agency to request an advisory opinion from the Board as to whether it would assert jurisdiction over that enterprise.

EFFECTIVE DATE: June 1, 1986.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Room 701, Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (29 U.S.C. 156), the National Labor Relations Board is amending its rules that provide for the Board's issuance of advisory opinions on the issue of whether an employer is within the Board's jurisdiction on the basis of its jurisdictional standards. The Association of Labor Relations Agencies (ALRA) petitioned the Board to consider the amendment of §§ 102.98 and 102.103 to enable state labor relations agencies to obtain administrative advice from the Board on whether the Board would assert jurisdiction over a particular employing enterprise. In determining an appropriate procedure, the Board was cognizant of the ALRA's interest in having a readily available, if less formalized, decisional response from the Board than the present advisory opinion procedure provides.

Rather than adopting a separate approach for responding to requests for advisory opinions by state agencies, the Board is amending its rules to allow for an expanded use of the advisory opinion procedure by state agencies and courts. The amendments to §§ 102.98 and 102.99 enlarge the present provisions that apply to requests for advisory opinions by state agencies and courts only when there is a question of whether the Board would assert jurisdiction under its current standards. The amended sections provide for advisory opinions on the broader issue of whether the Board would assert jurisdiction over an employing enterprise, thereby including jurisdiction under the National Labor Relations Act as well as the Board's current standards. The amended procedure utilizes an established procedure culminating in an opinion that would be published in a Board volume. This procedure will provide access to the Board by state agencies and courts on a greater range of jurisdictional issues. Access to the Board by the parties to the state proceeding where the state agency or court does not seek Board assistance is not deemed appropriate.

The remaining provisions pertaining to the advisory opinion process, §§ 102.100 to 102.104, are unchanged.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, labor management relations.

Accordingly, 29 CFR Part 102 is amended to read as follows:

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

1. The authority citation for 29 CFR Part 102 is revised to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156).

2. Section 102.98 is amended by revising paragraph (b) to read as follows:

§ 102.98 Petition for advisory opinion; who may file; where to file.

* * * * *

(b) Whenever an agency or court of any State or territory is in doubt whether the Board would assert jurisdiction over the parties in a proceeding pending before such agency or court, the agency or court may file a petition with the Board for an advisory opinion on whether the Board would decline to assert jurisdiction over the parties before the agency or the court (1) on the basis of its current standards, or (2) because the employing enterprise is not within the jurisdiction of the National Labor Relations Act.

3. Section 102.99 is amended by revising paragraphs (b) and (c) to read as follows:

§ 102.99 Contents of petition for advisory opinion; contents of request for administrative advice.

* * * * *

(b) A petition for an advisory opinion, when filed by an agency or court of a State or territory, shall allege the following:

(1) The name of the agency or court.

(2) The names of the parties to the proceeding and the docket number.

(3) The nature of the proceeding, and the need for the Board's opinion on the jurisdictional issue to the proceeding.

(4) The general nature of the business involved in the proceeding and, where appropriate, the nature of and details concerning the employing enterprise.

(5) The findings of the agency or court or, in the absence of findings, a statement of the evidence relating to the commerce operations of such business and, where appropriate, to the nature of the employing enterprise.

(c) Eight copies of such petition or request shall be submitted to the Board in Washington, DC. Such petition or request shall be printed or otherwise legibly duplicated. Carbon copies of typewritten matter will not be accepted.

Dated, Washington, DC, April 22, 1986.

By direction of the Board. National Labor Relations Board.

John C Truesdale,

Executive Secretary.

[FR Doc. 86-9328 Filed 4-24-86; 8:45 am]

BILLING CODE 7545-01-M

29 CFR Part 102

Procedural Rules; Filing of Briefs

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: In 1982, the Board revised its rules and regulations to provide that briefs that are filed with the Board contain no more than 50 pages. Practice under the rules has shown that there has been some confusion and misuse regarding the exceptions document upon which there is no 50-page limitation. The changes in the rule are designed to provide a clearer description of the contents of the exceptions document and the brief, and, therefore, to facilitate administration of the 50-page limit on briefs by precluding placement in the exceptions of material that appropriately belongs in the brief.

EFFECTIVE DATE: June 1, 1986.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, DC 20570, Telephone: (202) 254-9430.

SUPPLEMENTARY INFORMATION: Pursuant to its authority under section 6 of the National Labor Relations Act, as amended (29 U.S.C. 156), the National Labor Relations Board is amending its rule regarding the filing of briefs and exceptions with the Board. Section 102.46(a) of the Board's rules presently provides that any party may file with the Board exceptions to the administrative law judge's decision or to any other part of the record or proceedings, together with a brief in support of exceptions. Section 102.46(j) restricts the length of briefs to 50 pages. There is no similar restriction for the length of exceptions. In order to ensure that material that properly belongs in briefs to the Board is not inserted in the exceptions, the descriptions of materials appropriately belonging in exceptions and briefs have been revised.

The present paragraph (b) has been divided into (b)(1) and (b)(2). The new (b)(1) has the present (1), (2), (3), and (4) of paragraph (b) redesignated as (b)(1)(i), (ii), (iii), and (iv). In (b)(1)(iv), the word "concisely" has been inserted to define the manner in which the grounds for exceptions should be stated. This is to emphasize that the statement of grounds should be short and to the point.

Paragraph (b)(1) has been further modified to distinguish the situation when a single document has been filed containing both the exceptions and the brief argument from the situation when separate documents have been filed, one setting forth the exceptions and the other constituting the brief. The subsection provides that when only a single document is filed, the document is subject to the 50-page limit for a brief in § 102.46(j), even though it also contains the exceptions. The subsection further provides that when two documents are filed—one an exceptions document and the other a brief—any argument or citation of authority in support of the exceptions shall be set forth only in the brief. In that situation, the subsection specifically states that the exceptions document shall not contain any argument or citation of authority. Under these provisions, the Executive Secretary's Office should be more readily able to identify in the two-document situation whether the exceptions document improperly contains argument or citation of authority. The presence in the exceptions document of citations of authority would clearly establish it as not in compliance with the rule.

Paragraph (b)(2) is a separate statement of the last two sentences of present § 102.46(b), which provides that any exception not urged before the Board is deemed waived.

Paragraph (c)(2) has been modified by adding the requirement that the specification of questions in the brief identify the specific exceptions that they are designed to support. This will facilitate identification of those exceptions for which no supporting argument is provided in the brief.

Paragraph (c)(3) has been modified to insert the word "record" rather than the present page of transcript to which argument in briefs must refer, because the scope of the record is broader and defined in § 102.45(b) of the Board's rules.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

Accordingly, 29 CFR Part 102 is amended to read as follows:

PART 102—RULES AND REGULATIONS, SERIES 8, AS AMENDED

1. The authority citation for 29 CFR Part 102 is revised to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156).

2. Section 102.46 is amended by revising paragraphs (b), (c), and (j) to read as follows:

§ 102.46 Exceptions, cross-exceptions, briefs; answering briefs; time for filing; where to file; service on the parties; extension of time; effect of failure to include matters in exceptions; oral arguments.

* * * * *

(b)(1) Each exception (i) shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; (ii) shall identify that part of the administrative law judge's decision to which objection is made; (iii) shall designate by precise citation of page the portions of the record relied on; and (iv) shall concisely state the grounds for the exception. If a supporting brief is filed the exceptions document shall not contain any argument or citation of authority in support of the exceptions, but such matters shall be set forth only in the brief. If no supporting brief is filed the exceptions document shall also include the citation of authorities and argument in support of the exceptions, in which event the exceptions document shall be subject to the 50-page limit as for briefs set forth in § 102.46(j).

(2) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

(c) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A clear and concise statement of the case containing all that is material to the consideration of the questions presented.

(2) A specification of the questions involved and to be argued, together with a reference to the specific exceptions to which they relate.

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific reference to the record and the legal or other material relied on.

* * * * *

(j) Exceptions to the administrative law judge's decision, or to the record, and briefs shall be printed or otherwise legibly duplicated. Carbon copies of typewritten matter will not be accepted. Eight copies of such documents shall be filed with the Board in Washington, DC., and copies shall also be served promptly on the other parties. All documents filed pursuant to this section shall be double spaced on 8½-by 11-inch paper. A brief filed pursuant to this section shall not be combined with any other brief, and shall not exceed 50 pages in length, exclusive of subject index and table of cases and other authorities cited, unless permission to exceed that limit is obtained from the Board by motion, setting forth the reasons therefore, filed not less than 10 days prior to the date the brief is due. Where any brief filed pursuant to this section exceeds 20 pages, it shall contain a subject index with page references and an alphabetical table of cases and other authorities cited.

Dated: Washington, DC, April 22, 1986.

By direction of the Board. National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 86-9329 Filed 4-24-86; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 511

Wage Order Procedure for Puerto Rico, the Virgin Islands and American Samoa; Compensation of Committee Members

AGENCY: Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document increases from $164 to $182 a day the per diem allowance to which members of industry committees in Puerto Rico, the Virgin Islands, and American Samoa are entitled. The industry committees, whose members include representatives of employees, employers, and the public, as appointed by the Secretary of Labor, meet periodically to review the wage rates in various industries and to recommend wage increases where appropriate. The committees meet pursuant to the Fair Labor Standards Act which authorized the establishment of minimum wage rates in Puerto Rico, the Virgin Islands, and American Samoa which are lower than the mainland minimum wage rate. This increase is in accord with changes in General Schedule salary rates effective January 6, 1985 for regular employees of the U.S. Department of Labor.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: James L. Valin, Assistant Administrator, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S3502, Washington, DC 20210, 202-523-8353.

SUPPLEMENTARY INFORMATION: It is the standard practice to adjust compensation for Industry Committee members in accordance with changes in General Schedule salary rates. The purpose of this amendment is to increase the compensation of each member of an industry committee from $164 to $182 for each day spent in the work of the committee. It accords with changes in General Schedule salary effective January 6, 1985 for regular employees of the U.S. Department of Labor.

As this amendment concerns only a rule of agency practice, and is not substantive, notice of proposed rule making, opportunity for public participation, and delay in effective date are not required by 5 U.S.C. 553. It does not appear that such participation or delay would serve a useful purpose. Accordingly, this revision shall be effective immediately.

Drafting Information

This document was prepared under the direction and control of James L. Valin, Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: 202-523-8353.

Classification

This rule relates to agency organization, management, or personnel pursuant to section 1(a)(3) of Executive Order 12291. Accordingly, it does not fall within the definition of "rule" under section 1(a) of the Executive Order.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under 5 U.S.C. 553(b), the requirements of the Regulatory analyses do not apply to this rule.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, since it would not require the collection or retention of information.

List of Subjects in 29 CFR Part 511

Administrative practice and procedure, Minimum wages, Wage and Hour Division, Puerto Rico, Virgin Islands, American Samoa.

Pursuant to authority in section 5 of the Fair Labor Standards Act of 1938 (52 Stat. 1062 as amended; 29 U.S.C. 205) and Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp. p. 1004), 29 CFR Part 511 is amended as follows:

PART 511—WAGE ORDER PROCEDURE FOR PUERTO RICO, THE VIRGIN ISLANDS AND AMERICAN SAMOA

1. The authority citation for Part 511 is revised to read as set forth below and the authority citation following § 511.4 is removed:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208; Secs. 2–12, 60 Stat. 237–244; 5 U.S.C. 1001–1011; § 511.4 is issued under Sec. 5, 52 Stat. 1062, as amended (29 U.S.C. 205).

2. Section 511.4 is revised to read as follows:

§ 511.4 Compensation of Committee members.

Each member of an industry committee will be allowed a per diem of $182 for each day actually spent in the work of the committee, and will, in addition, be reimbursed for necessary transportation and other expenses incident to traveling in accordance with Standard Government Travel Regulations then in effect. All travel expenses will be paid on travel vouchers certified by the Administrator or his authorized representative. Any other necessary expenses which are incidental to the work of the committee may be incurred by the committee upon approval of, and shall be paid upon, certification of the Administrator or his authorized representative.

Signed at Washington, DC this 22nd day of April, 1986.

Susan R. Meisinger,

Deputy Under Secretary for the Employment Standards Administration.

[FR Doc. 86–8437 Filed 4–24–86; 8:45 am]

BILLING CODE 4510-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-3007-4]

Air Quality; Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a site-specific revision to the Illinois State Implementation Plan (SIP) for Total Suspended Particulates (TSP) as it applies to the Navy Public Works Center (NPWC), Department of the Navy, which is located at the Great Lakes Naval Base, Great Lakes, Shields Township, Illinois. The revision would allow NPWC a variance from the requirements of Illinois Rule 202(b) until July 30, 1985. This variance has already expired. This action is being taken in response to a May 13, 1985, request from the State of Illinois.

DATE: This action will be effective June 24, 1986 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C.

Copies of the SIP revision and other materials related to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 353–0396, before visiting the Region V Office.)

U.S Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604.

U.S Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Written comments should be sent to:

Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26) U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: On May 13, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a variance from Illinois Rule 202(b) for a Brule pathological waste incinerator (BPWI) at NPWC's facility in Great Lakes, Shields Township, Illinois, as a revision to its TSP SIP. Shields Township is an attainment area for both the primary and secondary national ambient air quality standards (NAAQS) for TSP.

The State is requesting that the NPWC be allowed a variance from the requirements of the opacity limit contained in Illinois Rule 202(b) until July 30, 1985. Rule 202(b) requires that:

> The emission of smoke or other particulate matter from any such emission source may have an opacity greater than 30 percent but not greater than 60 percent for a period or periods aggregating 8 minutes in any 60 minute period provided that such more opaque emissions permitted during any 60 minute period shall occur from only one such emission source located within a 305 meter (1000 feet) radius from the center point of any other such emission source owned or operated by such person, and provided further that such more opaque emissions permitted from each such emission source shall be limited to 3 times in any 24 hour period.

Before July 30, 1985, NPWC installed a new BPWI in order to comply with the opacity requirements contained in Rule 202(b). The BPWI is presently operating. It has been stack tested and demonstrated compliance with the particulate matter mass emission rate and the opacity limit.

The Illinois Pollution Control Board granted NPWC a variance from the Rule 202(b) subject to the following conditions:

1. The variance expired on July 30, 1985.

2. The compliance schedule is as follows:

October 20, 1984—95 percent design complete
October 25, 1984—Preadvertise documentation
November 15, 1984—Final design complete
December 10, 1984—Advertise for construction contract
January 10, 1985—Award contract
January 25, 1985—Apply for construction permit
February 25, 1985—Begin construction
March 10, 1985—Apply for operating permit
May 10, 1985—Completion and start up

3. Beginning with the first calendar month following the granting of the variance, the Navy shall submit to the IEPA monthly reports detailing its progress in achieving the final compliance date of May 10, 1985.

4. The afterburner of the present pathological waste incinerator should be pre-heated to 1400°F, or greater, and maintained at that operating temperature throughout the period of the variance.

Shields Township, where the NPWC is located, has been designated as an attainment area for both the primary and the secondary TSP standards throughout the period covered by the variance. During that period, the facility was in compliance with the mass emissions limit applicable to the source. Although the facility was not meeting the opacity limit throughout that period, the area continued to attain the TSP standards. For that reason, USEPA concludes that the facility's failure to meet the opacity limit during that period did not in fact interfere with

maintenance of the standards. Therefore, USEPA is approving NPWC's variance request.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on June 24, 1986. However, if we receive notice by May 27, 1986 that someone wishes to submit critical comments, *then* USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a public comment period.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 24, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 17, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Illinois

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows: Authority: 42 U.S.C. 7401–7642.

2. Section 52.720 is amended by adding new paragraph (c)(64) as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(64) On May 13, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a variance from Illinois Rule 202(b) for a Brule pathological waste incinerator (BPWI) at NPWC's facility located at the Great Lakes Naval Base, Great Lakes, Shields Township, Illinois, as a revision to its TSP SIP. Shields Township is an attainment area for both the primary and secondary national ambient air quality standards (NAAQS) for TSP.

(i) Incorporation by reference.

(A) Opinion and Order of the Illinois Pollution Control Board 84–156 adopted on March 22, 1985.

* * * * *

[FR Doc. 86–9289 Filed 4–24–86; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[A–5–FRL–3008–3]

Air Quality; Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving a site-specific revision to the Illinois State Implementation Plan (SIP) for Volatile Organic Compounds (VOC) as it applies to Precision Coatings, Incorporated (PCI), which is located in Bureau County, Illinois. The revision would allow PCI a variance from the requirements of Illinois Pollution Control Board (IPCB) Rule 215.204(C) until June 1, 1985. This variance has expired. This action is being taken in response to a July 22, 1985, request from the State of Illinois.

DATES: This action will be effective June 24, 1986 unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of this revision to the Illinois SIP are available for inspection at:

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC

Copies of the SIP revision and other materials related to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 353–0396, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR–26), U.S. Environmental Protection Agency, Region V, Chicago, Illinois 60604, (312) 886–6031.

SUPPLEMENTARY INFORMATION: Rule 215.204 [formerly 205(n)(1)(C)][1] requires that each coating used at a paper coating line meet at emission limit of 2.9 pounds of VOC (excluding water) per gallon of coating not later than December 31, 1982. As an alternative to 215.204(C), a source may elect to install VOC control equipment, pursuant to Rule 215.205(a) [formerly 205(n)(2)(A)].[2] The control equipment (an afterburner system) must oxidize to carbon dioxide and water 75 percent of the emissions from the coating line and 90 percent of the nonmethane volatile organic material which enters it. Compliance with this alternative method was to be achieved by December 31, 1982.

On July 22, 1985, the Illinois Environmental Protection Agency (IEPA) submitted a variance from IPCB 215.204(C) for coating Machine Number 2 at the PCI facility in Spring Valley, Illinois, as a revision to its VOC SIP. Spring Valley is in Bureau County which has attained the NAAQS for ozone. This revision is in the form of a February 20, 1985, Opinion and Order of the Illinois Pollution Control Board (IPCB) Number 84–117. This Order was later modified by an April 4, 1985, Order of the Board. It grants a variance from the existing SIP requirement until June 1, 1985, and

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[1] Rule 215.204(C) was incorporated into the Illinois SIP as Rule 205(n)(1)(C) on February 21, 1980 (45 FR 11472). It was subsequently recodified by the State as Rule 215.204(C). This recodification has not been submitted to USEPA as a SIP revision. USEPA, therefore, approves this SIP revision as a variance from the requirements of Rule 205(n)(1)(C) which is part of the Illinois SIP.

It should also be noted that, because of a typographical error, PCI was granted a variance from Rule 205.204(C) on February 20, 1985, Opinion and Order of the IPCB. There is no such rule. USEPA has conferred with the IPCB staff on this matter and confirmed that this citation was in error, and the intent of the IPCB was to grant a variance from the requirements of Rule 215.204(C). Reinforcing this intent is the fact that Rule 215.204(C) was correctly cited elsewhere in the Opinion and Order. USEPA, therefore, approves a variance from Rule 215.204(C) which was incorporated in the SIP as Rule 205(n)(1)(C).

[2] Rule 215.205(a) was incorporated in the Illinois SIP as Rule 205(n)(2)(A) on February 21, 1980 (45 FR 11472). It has been recodified by the State as Rule 215.205(a).

provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, each coating used on Machine Number 2 at PCI is subject to the emission limits in Rule 215.204(C); or PCI may elect to install an afterburner system, pursuant to 215.205(a).

In lieu of the current SIP compliance date of December 31, 1982, the State is requesting an extended compliance date to June 1, 1985, for PCI's coating operations for Machine Number 2, in order for PCI to achieve compliance with 215.205(a) through the installation of an afterburner system.

Machine Number 2

PCI's control strategy of reformulation was not successful for the coatings used on Machine Number 2. Therefore, PCI committed to the installation of thermal oxidation equipment to comply with Rule 215.205(a). PCI has installed this thermal oxidation equipment, and it is presently operating. This equipment is similar to that used at PCI's Michigan facility and has a reported control efficiency of 90 percent. PCI's average annual emissions from Machine Number 2 before the installation of the thermal oxidation equipment were 175 tons. The allowable emissions are 43.8 tons per year (using a 75 percent overall control efficiency).

USEPA is approving this variance for the following reasons: (1) PCI's Spring Valley facility is located in an ozone attainment area, (2) this variance does not jeopardize the attainment and maintenance of the ozone National Ambient Air Quality Standards, and (3) PCI has now installed thermal oxidation equipment. Therefore, in today's final rulemaking, USEPA is approving Illinois' variance request.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on June 24, 1986. However, if we receive notice by May 27, 1986 that any person wishes to submit critical comments, *then* USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a public comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. Section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 24, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 17, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Section 52.720 is amended by adding new paragraph (c)(65) as follows:

§ 52.720 Identification of Plan.

* * * * *

(c) * * *

(65) Submitted from the Illinois Environmental Protection Agency (IEPA) dated July 22, 1985, requesting an extended compliance schedule for Precision Coatings Incorporated (PCI) coating Machine Number 2.

(i) Incorporation by reference.

(A) Illinois Pollution Control Board Opinion and Order of the Board, PCB 84–117, which was adopted on February 20, 1985, and a modification to PCB 84–117 which was adopted on April 14, 1985.

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BILLING CODE 6560–50–M

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40 CFR Part 52

[A–5 FRL–3008–2]

Air Quality Approval and Promulgation of Implementation Plans, Indiana

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: On September 2, 1983, Indiana submitted as a revision to its State Implementation Plan (SIP) for total suspended particulates (TSP) an alternative emission control plan for the Occidental Chemical Corporation (OCC) facility in Jeffersonville Township, Clark County, Indiana. USEPA today is approving the emission limits within it as a site specific SIP revision.

EFFECTIVE DATE: This final rulemaking becomes effective on May 27, 1986.

ADDRESSES: Copies of this revision to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC 20408.

Copies of the SIP revision, public comments on the notice of proposed rulemaking and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886–6031, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR–26), 230 South Dearborn Street, Chicago, Illinois 60604

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460

Indiana Air Pollution Control Division, Indiana State Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

SUPPLEMENTARY INFORMATION: On September 2, 1983, the Indiana Air Pollution Control Board (Board) submitted a SIP revision in the form of revised operating permits [1] for OCC and requested that USEPA approve it as a "bubble" under the USEPA proposed Emissions Trading Policy Statement (ETPS), published April 7, 1982 (47 FR 15076). Amendments to these operating permits were submitted by the State on December 21, 1983.

The OCC Jeffersonville Township facility produces phosphoric acid and salts. This facility is located in the portion of Clark County, Indiana, which is designated as a secondary nonattainment area for TSP.[2]

USEPA proposed on May 15, 1984 (49 FR 20518), to disapprove the OCC proposed revision. USEPA determined that the proposed bubble was not approvable because it was not consistent with the ETPS and the technical support materials were insufficient.

USEPA received comments in response to the May 15, 1984, notice. Based upon the State and OCC

[1] These operating permits revise Indiana's Rule 325 IAC 6–1–17.

[2] On March 22, 1985 (50 FR 11503), USEPA approved the State of Indiana's request to redesignate Jeffersonville Township from primary nonattainment to secondary nonattainment.

comments, USEPA published a second notice of proposed rulemaking March 1, 1985 (50 FR 8346), to approve the OCC proposed revision request.

During the public comments period for the March 1, 1985, notice, USEPA received one comment from OCC. OCC noted that the potassium phosphate salt production line tons per year current SIP limit was an error and that there is no current independent SIP limit for this salt production line. USEPA disagrees with OCC. Because the potassium phosphate salt line was not explicitly included in the Clark County, Appendix to Indiana's nonattainment TSP regulations, 325 IAC 6-1, it is governed by the general emission limitations in 325 IAC 6-1, Section 2(a) of this regulation, that limits the potassium phosphate salt line to 0.03 grains per dry standard cubic foot (gr/dscf).

This action is not affected by the PSD regulations because the revision does not result in an increase in actual emissions. Thus, the action does not qualify as a major modification and does not consume PSD increment.

Based on the proposal, USEPA has determined that the emission limits contained in the operating permits can be approved as a site-specific SIP revision. The current and proposed limits are:

Source	Current SIP limits		Proposed SIP limits	
	gr/dscf	T/yr	gr/dscf	T/yr
Thermal Process (Acid Line)	0.023	8.7	[1] 0.122	40
Sodium Phosphate Salt Production Line	0.028	85.2	[1] 0.037	40.9
Potassium Phosphate Salt Production Line	0.03		[1] 0.109	13
Total		93.9		93.9

[1] Based on actual stack test data.
Note: T/yr = Tons per year.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 27, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Intergovernmental relations.

Note.—Incorporation by reference of the State implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 12, 1986.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.770 is amended by adding new paragraph (c)(56) as follows:

§ 52.770 Identification of Plan.

* * * * *

(c) * * *

(56) On September 2, 1983, the Indiana Air Pollution Control Board (Board) submitted revised emission limitations for Occidental Chemical Corporation (OCC), located in Clark County, Indiana. Amendments to these operating permits were submitted by the State on December 21, 1983. These emission limits replace those approved for OCC (under its former name, Hooker Chemical) at (c)(34).

(i) Incorporation by reference.

(A) Indiana Air Pollution Control Board Operation Permits:

(1) Control Number 16113, date issued December 27, 1982.

(2) Control Number 16114, date issued December 27, 1982.

(3) Control Number 16115, date issued December 27, 1982.

(ii) Additional material.

(A) OCC corrected emissions dated September 13, 1984.

(B) OCC's new modeled data, dated November 6, 1984.

(C) State's modeling for OCC and surrounding area, dated July 2, 1984 and August 7, 1984.

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BILLING CODE 6560-50-M

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1502

National Environmental Policy Act Regulations; Incomplete or Unavailable Information

AGENCY: Council on Environmental Quality, Executive Office of the President.

ACTION: Final rule.

SUMMARY: The Council on Environmental Quality (CEQ) promulgates regulations, binding on all federal agencies, to implement the procedural provisions of the National Environmental Policy Act (NEPA). The regulations address the administration of the NEPA process, including preparation of environmental impact statements for major federal actions which significantly affect the quality of the human environment. On August 9, 1985, CEQ published a proposed amendment to one of these regulations (40 CFR 1502.22), which addresses incomplete or unavailable information in an environmental impact statement (EIS). 50 FR 32234. After reviewing the comments received in response to that proposal, the CEQ now issues the final amendment to that regulation. The final amendment requires all federal agencies to disclose the fact of incomplete or unavailable information when evaluating reasonably foreseeable significant adverse impacts on the human environment in an EIS, and to obtain that information if the overall costs of doing so are not exorbitant. If the agency is unable to obtain the information because overall costs are exorbitant or because the means to obtain it are not known, the agency must (1) affirmatively disclose the fact that such information is unavailable; (2) explain the relevance of the unavailable information; (3) summarize the existing credible scientific evidence which is relevant to the agency's evaluation of significant adverse impacts on the human environment; and (4) evaluate the impacts based upon theoretical approaches or research methods generally accepted in the scientific community. The amendment also specifies that impacts which have a low probability of occurrence but catastrophic consequences if they do occur, should be evaluated if the analysis is supported by credible scientific evidence and is not based on pure conjecture, and is within the rule of reason. The requirement to prepare a "worst case analysis" is rescinded.

The existing guidance regarding 40 CFR 1502.22, found in Question 20 of *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18032 (1981), is hereby withdrawn. Guidance relevant to the amended regulation will be published after the regulation becomes effective.

EFFECTIVE DATE: May 27, 1986.

FOR FURTHER INFORMATION CONTACT: Dinah Bear, General Counsel, Council on Environmental Quality, 722 Jackson Place NW., Washington, DC 20006. (202) 395-5754.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

Under Executive Order 12291, CEQ must judge whether a regulation is major and, therfore, whether a Regulatory Impact Analysis must be prepared. This regulation does not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, does not constitute a major rulemaking. As required by Executive Order 12291, this regulation was submitted to the Office of Management and Budget (OMB) for review. There were no comments from OMB to CEQ regarding compliance with Executive Order 12291 in relationship to amendment of 40 CFR 1502.22.

Paperwork Reduction Act

The information collection requirements in this proposed rule were submitted for approval to OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* No comments were submitted by OMB or the public on the information collection requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, CEQ is required to prepare a Regulatory Flexibility Analysis for proposed regulations which would have a significant impact on a substantial number of small entities. No analysis is required, however, when the Chairman of the Council certifies that the rule will not have a significant economic impact on a substantial number of small entities. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that this final amendment would not have a significant impact on a substantial number of small entities.

Environmental Assessment

Although there are substantial legal questions as to whether entities within the Executive Office of the President are required to prepare environmental assessments, CEQ, consistent with its practice in 1978, has prepared a special environmental assessment and a Finding of No Significant Impact regarding amendment of this regulation, which is available to the public upon request. For the reasons stated in the Finding of No Significant Impact, CEQ has concluded that the amendment to 40 CFR 1502.22 will not have a significant impact on the quality of the human environment.

Background

The National Environmental Policy Act, signed into law by President Nixon on January 1, 1970, articulated national policy and goals for the nation, established the Council on Environmental Quality, and, among other federal agencies to assess the environmental impacts of and, among other things, required all federal agencies to assess the environmental impacts of and alternatives to proposals for major federal actions significantly affecting the quality of the human environment. The Council on Environmental Quality, charged with the duty of overseeing the implementation of NEPA, developed guidelines to aid federal agencies in assessing the environmental impacts of their proposals. A combination of agency practice, judicial decisions and CEQ guidance resulted in the development of what is commonly referred to as "the NEPA process", which includes the preparation of environmental impact statements for certain types of federal actions.

Because of complaints about paperwork and delays in projects caused by the NEPA process, and a perception that the problem was caused in part by lack of a uniform, binding authority, CEQ was directed in 1977 to promulgate binding regulations implementing the procedural provisions of NEPA. (Executive Order 11991, 3 CFR 123 (1978). Council was directed to specifically: "make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives." After undertaking an extensive process of review and comment with federal, state and local governmental officials, private citizens, business and industry representatives, and public interest organizations, the Council issued the NEPA regulations on November 29, 1978. 40 CFR 1500–1508 (1958). The regulations were hailed as a "significant improvement on prior EIS guidelines", (Letter, Chamber of Commerce of the United States, January 8, 1979), and became effective for, and binding upon, most federal agencies on July 30, 1979, and for all remaining federal agencies on November 29, 1979.

Since promulgation of the NEPA regulations, the Council has continually reviewed the regulations to identify areas where further interpretation or guidance is required.[1] No broad support for amendment of the regulations surfaced during review under the 1981 Vice President's Regulatory Relief Task Force; indeed, some recommended that, "CEQ's streamlining regulations for the implementation of NEPA requirements should receive full support from the Administration and the federal agencies". (Letter, National League of Cities, May 14, 1981). Although continual attention is required to ensure that the mandate of the regulations is being fulfilled, the regulations appear to be generally working well.

During the past two and a half years, however, the Council has received numerous requests from both government agencies and private parties to review and amend the regulation which addresses "incomplete or unavailable information" in the EIS process. That regulation currently reads as follows:

"Section 1502.22. Incomplete or unavailable information.

"When an agency is evaluating significant adverse effects on the human environment in an environmental impact statement and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

"(a) If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

"(b) If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence." 40 CFR 1502.22.

On August 11, 1983, the Council proposed guidance regarding the "worst case analysis" requirement and asked for comments on the proposed guidance 48 FR 36486 (1983). The draft guidance suggested that an initial threshold of probability should be crossed before the requirements in 40 CFR 1502.22 became applicable. Although some

[1] See, *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations*, 46 FR 18026 (1981); *Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping*, April 30, 1981 (available upon request from the General Counsel's office, CEQ); *Guidance Regarding NEPA Regulations*, 48 FR 34263 (1983).

commentators agreed with the guidance, others believed that the proposed threshold would weaken analysis of low probability and severe consequences impacts. Other writers suggested different approaches to the issue, or advocated amendment of the regulation rather than guidance. After reviewing the comments received in response to that proposal, the Council withdrew the proposed guidance, stating its intent to give the matter additional examination before publishing a new proposal. 49 FR 4803 (1984).

After many discussions with federal agency representatives and other interested parties in state governments, public interest groups, and business and industry, the Council published an Advance Notice of Proposed Rulemaking (ANPRM) for 40 CFR 1502.22, and stated that it was considering the need to amend the regulation. 49 FR 50744 (1984). The ANPRM posed five questions about the issue of incomplete or unavailable information in an EIS and asked for thoughtful written responses to the questions. The Council received 161 responses to the ANPRM. A majority of the commentators cited problems with the "worst case analysis" requirement, but recognized the need to address potential impacts in the face of incomplete or unavailable information. Many commentators thought that either the regulation itself or recent judicial decisions required agencies to go beyond the "rule of reason". These commentators suggested that the "rule of reason" should be made specifically applicable to the requirements of the regulation. A minority of commentators felt strongly that the original regulation was adequate and should not be amended.

On March 18, 1985, the Council held a meeting, open to the public, to discuss the comments received in response to the Advance Notice of Proposed Rulemaking. 50 FR 9535 (1985). Shortly after that meeting, the Council voted to amend the regulation. On August 9, 1985, CEQ published a proposed amendment to 40 CFR 1502.22 which read as follows:

"Section 1502.22. Incomplete of unavailable information.

"In preparing an environmental impact statement, the agency shall make reasonable efforts, in light of overall costs and state of the art, to obtain missing information which, in its judgment, is important to evaluating significant adverse impacts on the human environment that are reasonably foreseeable. If, for the reasons stated above, the agency is unable to obtain this missing information, the agency shall include within the environmental impact statement (a) a statement that such information is missing, (b) a statement of the relevance of the missing information to evaluating significant adverse impacts on the human environment, (c) a summary of existing credible scientific evidence which is relevant to evaluating the significant adverse impacts on the human environment, and (d) the agency's evaluation of such evidence. 'Reasonably foreseeable' includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that they have credible scientific support, are not based on pure conjecture, and are within the rule of reason." 50 FR 32238 (1985).

The Council received 184 comments in response to the proposed amendment: 81 comments from business and industry; 39 comments from private citizens; 30 comments from public interest groups; 15 comments from federal agencies; 14 comments from state governments; 4 comments from local governments; and one comment from a Member of Congress.

A majority of the commentators favored an amendment to the regulation, and supported the general approach of the proposed amendment. However, many of these writers offered specific suggestions for improving the proposal. Many commentators asked for definitions of terms used in the proposal, particularly for the phrase "credible scientific evidence." Some commentators wanted the Council to specify a particular methodology, such as risk assessment, as a substitute for a worst case analysis. Many commentators had specific comments about particular words or phrases used in the proposed amendment. Many commentators asked CEQ to provide further guidance or monitoring after the regulation was issued in final form.

A minority of commentators strongly opposed the amendment. Some of these writers were concerned over perceived changes in the first two paragraphs of the original regulation—requirements to disclose the fact that information is missing, and to obtain that information, if possible. Some commentators opposed deletion of the "worst case analysis" requirement. Other commentators believed that the proposed amendment did not require agencies to analyze or evaluate impacts in the face of incomplete or unavailable information. These comments, and others, will be discussed below in the section "Comments and the Council's Response".

On January 9, 1986, CEQ held a meeting, open to the public, to discuss the comments received in response to the proposed amendment. 50 FR 53061 (1985). A summary of the presentation made at that meeting is available from the Office of the General Counsel. Shortly after that meeting, the Council voted to proceed to final amendment of the regulation.

Purpose and Analysis of Final Amendment

CEQ is amending this regulation because it has concluded that the new requirements provide a wiser and more manageable approach to the evaluation of reasonably foreseeable significant adverse impacts in the face of incomplete or unavailable information in an EIS. The new procedure for analyzing such impacts in the face of incomplete or unavailable information will better inform the decisionmaker and the public. The Council's concerns regarding the original wording of 40 CFR 1502.22 are discussed at length in the preamble to the proposed amendment. 50 FR 32234 (1985). It must again be emphasized that the Council concurs in the underlying goals of the original regulation—that is, disclosure of the fact of incomplete or unavailable information; acquisition of that information if reasonably possible; and evaluation of reasonably foreseeable significant adverse impacts even in the absence of all information. These goals are based on sound public policy and early NEPA case law.[2] Rather, the need for amendment is based upon the Council's perception that the "worst case analysis" requirement is an unproductive and ineffective method of achieving those goals; one which can breed endless hypothesis and speculation.

The amended regulation applies when a federal agency is preparing an EIS on a major federal action sigificantly affecting the quality of the human environment and finds that there is incomplete or unavailable information relating to reasonably foreseeable significant adverse impacts on the environment. It retains the legal requirements of the first paragraph and subsection (a) of the environment and finds that there is incomplete or unavailable information relating to reasonably foreseeable significant adverse impacts on the environment. It retains the legal requirements of the first paragraph and subsection (a) of the

[2] See, for example, *Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079 (D.C. Cir. 1973).

original regulation. Thus, when preparing an EIS, agencies must disclose the fact that there is incomplete or unavailable information. The term "incomplete information" refers to information which the agency cannot obtain because the overall costs of doing so are exorbitant. The term "unavailable information" refers to information which cannot be obtained because the means to obtain it are not known. If the incomplete information relevant to adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency must include the information in the EIS. The first paragraph and subsection (a) of the original regulation have been amended only insofar as the phrases "incomplete or unavailable information" (title of the original regulation) or "incomplete information" are substituted for synonymous phrases and the term "reasonably foreseeable" is added to modify "significant adverse impacts". These changes are made for consistency, clarity and readability.

Subsection (b) is amended to require federal agencies to include four items in an EIS if the information relevant to reasonably foreseeable significant adverse impacts remains unavailable because the overall costs of obtaining it are exorbitant or the means to obtain it are not known. The first step is disclosure of the fact that such information is incomplete or unavailable; that is, "a statement that such information is incomplete or unavailable". The second step is to discuss why this incomplete or unavailable information is relevant to the task of evaluating reasonably foreseeable significant adverse impacts; thus, "a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable relevant to evaluating the reasonably foreseeable significant adverse impacts, impacts on the human environment". Fourth, the agency must use sound scientific methods to evaluate the potential impacts; or in the words of the regulation, "the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community".

The regulation also makes clear that the reasonably foreseeable potential impacts which the agency must evaluate include those which have a low probability of occurrence but which would be expected to result in catastrophic consequences if they do occur. However, the regulation specifies that the analysis must be supported by credible scientific evidence, not based on pure conjecture, and be within the rule of reason.

Subsection (b) deletes two substantive requirements from the same subsection of the original regulation, promulgated in 1978. First, it eliminates the requirement for agencies to "weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty" while in the process of preparing an EIS. The Council believes that the weighing of risks and benefits for the particular federal proposal at hand is properly done after completion of the entire NEPA process, and is reflected in the Record of Decision. Nothing, of course, prohibits a decisionmaker from withdrawing a proposal during the course of EIS preparation.

Second, the regulation eliminates the "worst case analysis" requirement. It does not, however, eliminate the requirement for federal agencies to evaluate the reasonably foreseeable significant adverse impacts of an action, even in the face of unavailable or incomplete information. Rather, it specifies that the evaluation must be carefully conducted, based upon credible scientific evidence, and must consider those reasonably foreseeable significant adverse impacts which are based upon scientific evidence. The requirement to disclose all credible scientific evidence extends to responsible opposing views which are supported by theoretical approaches or research methods generally accepted in the scientific community (in other words, credible scientific evidence).

The regulation also requires that analysis of impacts in the face of unavailable information be grounded in the "rule of reason". The "rule of reason" is basically a judicial device to ensure that common sense and reason are not lost in the rubric of regulation. The rule of reason has been cited in numerous NEPA cases for the proposition that, "An EIS need not discuss remote and highly speculative consequences. . . . This is consistent with the (CEQ) Council on Environmental Quality Guidelines and the frequently expressed view that adequacy of the content of the EIS should be determined through use of a rule of reason." *Trout Unlimited* v. *Morton*, 509 F.2d 1276, 1283 (9th Cir. 1974). In the seminal case which applied the rule of reason to the problem of unavailable information, the court stated that, "[NEPA's] requirement that the agency describe the anticipated environmental effects of a proposed action is subject to a rule of reason. The agency need not foresee the unforeseeable, but by the same token, neither can it avoid drafting an impact statement simply because describing the environmental effects of alternatives to particular agency action involves some degree of forecasting . . . 'The statute must be construed in the light of reason if it is not to demand what is, fairly speaking, not meaningfully possible . . .'" *Scientists' Institute for Public Information, Inc.* v. *Atomic Energy Commission*, 481 F.2d 1079, 1092 (D.C. 1973), citing *Calvert Cliffs' Coordinating Committee* v. *Atomic Energy Commission*, 499 F.2d 1109, 1114 (D.C. Cir. 1971). The Council's amendment supports and conforms with this direction.

The evaluation of impacts under § 1502.22 is an integral part of an EIS and should be treated in the same manner as those impacts normally analyzed in an EIS. The information included in the EIS to fulfill the requirements of § 1502.22 is properly a part of the "Environmental Consequences" section of the EIS (40 CFR 1502.16). As with other portions of the EIS, material substantiating the analysis fundamental to the evaluation of impacts may properly be included in an appendix to the EIS.

Comments and the Council's Response

Comment: CEQ does not make clear the fact that the first paragraph and paragraph (a) of 1502.22 would be eliminated in the proposed amendment. The preamble says nothing about radical changes in the research requirements of the existing regulation.

Response: The changes to the first paragraph and subsection (a) of the existing regulation in the proposed amendment were made primarily for the purpose of attempting to clarify and simplify the existing requirements. However, in response to a number of concerns regarding perceived changes in the legal requirements of these paragraphs, the Council has chosen to retain the original format of the regulation. The Council intends that the substitution of the phrase "incomplete or unavailable information" and "incomplete information" are taken from the title of the regulation itself, and are being inserted for the sake of consistency of terms and clarity.

Comment: The term "reasonable efforts" should be defined.

Response: The term "reasonable efforts" does not appear in the final regulation.

Comment: The proposed amendment drops the standard of "exorbitant costs"

and substitutes "overall costs." Substantively, the current standard should be retained. It is a purposefully high standard, intended to counter agencies' demonstrated reluctance to seek out information. The proposed standard is lax and undefined.

Response: The final regulation retains the original standard.

Comment: The term "state of the art" should be replaced with "the availability of adequate scientific or other analytical techniques or equipment".

Response: The term has been deleted in the final regulation, and the phrase "the means to obtain it are not known" is substituted. That phrase is meant to include circumstances in which the unavailable information cannot be obtained because adequate scientific knowledge, expertise, techniques or equipment do not exist.

Comment: The regulation should make clear that "overall costs" include, among other things, all economic costs and delays in timing. The "overall cost" requirement needs to be further defined to reflect items such as comparing low cost/high cost risk (and vice versa), costs of time in obtaining information, costs of delaying projects, benefit/cost ratio and outyear impact cost.

Response: CEQ intends that the term "overall costs" encompasses financial costs and other costs such as costs in terms of time (delay) and personnel. It does not intend that the phrase be interpreted as a requirement to weigh the cost of obtaining the information against the severity of the impacts, or to perform a cost-benefit analysis. Rather, it intends that the agency interpret "overall costs" in light of overall program needs.

Comment: The term "missing information" should be clarified or changed.

Response: The term "missing information" is deleted in the final regulation, and is replaced with the terms "incomplete or unavailable information" and "incomplete information". These terms are consistent with the title of the regulation.

Comment: The word "material" should be substituted for the word "significant" because the word "significant" is a term of art and incorporates consideration of controversy surrounding a proposal. The word "material" would be more appropriate.

Response: The final regulation retains the term "significant". "Significant" is indeed a term of art which connotes the type of environmental impact which the agency is obligated to analyze in an EIS. Consideration of controversy is one of many factors which must be considered in determining whether an impact is "significant"; others include the degree to which the proposed action affects public health or safety, unique characteristics of the geographic area such as wetlands, wild and scenic rivers, etc., the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks, the cumulative impacts of an action, whether the action may adversely affect an endangered species or critical habitat, the degree to which an action may adversely affect historic areas, and whether the proposed action would violate another federal, state or local environmental law. 40 CFR 1508.27. The 1978 CEQ regulations differed from the earlier CEQ Guidelines in stating that the fact of controversy does not, alone, require preparation of an EIS; rather, it is one of many factors which the responsible official must bear in mind in judging the context and intensity of the potential impacts.

Comment: The term "in its judgment" gives agencies the administrative discretion to limit the data needed to prepare an EIS. It gives too much discretionary authority to agency officials to decide if they need to obtain the information. Suggest deleting "in its judgment" or adding "and with the concurrence of appropriate federal or state resource agencies".

Related Comment: It is important to allow an agency discretion to determine the extent of the investigation required to obtain information.

Response: The term "in its judgment" is deleted from the final regulation. However, deletion of that phrase is not intended to change the discretion currently vested in the agencies to determine the extent of the investigation required to obtain information. The agency's discretion must be used to make judgments about cost and scientific availability of the information.

Comment: The proposed amendment's definition of "reasonably foreseeable" should be strengthened or clarified or the use of this phrase should be changed.

Response: The term "reasonably foreseeable" has a long history of use in the context of NEPA law, and is included elsewhere in the CEQ NEPA regulations. 40 CFR 1508.8(b). Generally, the term has been used to describe what kind of environmental impacts federal agencies must analyze in an EIS; for example, ". . . if the [agency] makes a good faith effort in the survey to describe the *reasonably foreseeable* environmental impact of the program, alternatives to the program and their *reasonably foreseeable* environmental impact, and the irreversible and irretrievable commitment of resources the program involves, we see no reason why the survey will not fully satisfy the requirements of [NEPA] section 102(C)." *Sierra Club* v. *Morton*, 379 F. Supp. 1254, 1259 (D. Col. 1974) (emphasis added). *See also, Town of Orangetown* v. *Gorsuch*, 718 F.2d 29, 34 (2d Cir. 1983); *NRDC* v. *NRC*, 685 F.2d 459, 476 (D.C. Cir. 1982). The term has also been used in the context of incomplete or unavailable information. *See Scientists' Institute for Public Information* v. *Atomic Energy Commission*, 481 F.2d 1079, 1092 (D.C. Cir. 1973).

Because of the controversy and nature of this particular regulation, CEQ has specified that in the context of 40 CFR 1502.22, the term "reasonably foreseeable" includes low probability/severe consequence impacts, provided that the analysis of such impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

Comment: To prevent confusion, the proposed amendment should use either the term "credible scientific evidence" or "credible scientific support"—not both.

Response: The final regulation uses the term "credible scientific evidence" and deletes the term "credible scientific support".

Comment: The term "credible scientific evidence" should be defined. (A number of commentators offered specific suggestions for such a definition).

Response: The final regulation states that the agency's evaluation of impacts in the face of incomplete or unavailable information should be based upon theoretical approaches or research methods generally accepted in the scientific community. While this is admittedly a broad and general direction, CEQ is concerned that a narrow definition of "credible scientific evidence" would prove inappropriate in some circumstances, given the wide variety of actions which potentially fall under the auspices of this regulation. In many cases, the Council expects that "theoretical approaches or research methods generally accepted in the scientific community" will include commonly accepted professional practices such as literature searches and peer review.

Comment: The term "credible" should be deleted from the regulation, and all information should be considered.

Response: The definition of the word "credible" is, "capable of being

believed". *Webster's II New Riverside University Dictionary*, 1984. Information which is unworthy of belief should not be included in an EIS.

Comment: The term "scientific" is overly restrictive since measurement of an action's environmental effects may be grounded in, among other things, economic, historical or sociological information.

Response: In an EIS, federal agencies are responsible for analysis of significant environmental effects which include "ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." 40 CFR 1508.8(b). The requirement to analyze these potential impacts or effects are not modified in any manner by the qualified "scientific evidence" in 40 CFR 1502.22. Rather, the term "scientific" is meant to imply that the evidence presented about the possibility of a certain impact should be based upon methodological activity, discipline or study. *Webster's II New Riverside University Dictionary, 1984.*

Comment: The amendment should include some recognized scientific method for evaluating uncertainty, such as, perhaps, a risk assessment approach.

Response: Because of the wide variety of types of incomplete or unavailable information which may potentially fall within the scope of this regulation, CEQ does not choose to specify a particular methodology. Rather, each agency should select that approach which best meets the goals of evaluating potential impacts in the face of unavailable information. Further, a requirement that a particular methodology be utilized might be soon outdated by scientific developments in a particular field.

Comment: The draft preamble states that the summary of credible scientific evidence must include all information from all sources, including minority or opposing viewpoints. What are "minority views" as they relate to credible scientific evidence?

Response: The preamble to the proposed amendment states that the requirement to disclose all credible scientific evidence extends to those views which are generally regarded as "minority views" within the scientific community. The final preamble adopts the term "responsible opposing views" as the preferred term, consistent with 40 CFR 1502.9(b). The requirement to include responsible opposing views reflects the belief that many times, particularly when dealing with questions of incomplete or unavailable information, there will be more than one point of view about potential environmental impacts which has scientific credibility. The regulation requires an agency to include information about such views which have scientific credibility, rather than simply selecting one concept which supports its particular view. The responsible opposing views, must, of course, meet the criteria set out in subsection (b) of the regulation. Once such information is set out in the EIA, the agency must then use its own judgment and discretion to determine which viewpoint it believes is the most worthy of acceptance.

Comment: CEQ should indicate in the preamble that along with available scientific evidence, the views and conclusions of other government agencies and departments may be considered.

Response: The views and conclusion of other government agencies and departments are appropriately considered throughout the EIS process, beginning with the scoping process. Section 1502.22 does not limit involvement by other federal agencies in that process. Special attention should be paid to the views of those agencies with special expertise or jurisdiction by law in a particular field of inquiry. 40 CFR 1503.1(a)(1). The views of the public, and indeed all interested parties, are, of course also to be considered throughout the EIS process.

Comment: It should be made clear that the summary should be limited to credible scientific evidence only.

Response: This is precisely the requirement of the regulation itself. Again, credible scientific evidence includes both majority views and responsible opposing views, so long as these views meet the criteria in the regulation.

Comment: The regulation should require agencies to state the probability or improbability of the occurrence of the impacts which are identified.

Response: Although this requirement is not part of the final regulation, agencies are free to include this information in the EIS. The Council encourages the inclusion of such data when it is relatively reliable and when such information would help to put the analysis in perspective for the decisionmaker and other persons who read and comment on the EIS.

Comment: The fourth requirement, to include the agency's "evaluation" of the scientific evidence is vague. Presumably, what is meant is not a critique of the evidence, but an application of the evidence to predict impacts.

Response: The fourth requirement has been reworded so that it is clear that the agency is required to evaluate reasonably foreseeable significant adverse impacts which significantly affect the quality of the human environment.

Comment: There is no requirement for the agencies to analyze impacts—the basic purpose of the regulation.

Response: The fourth requirement clearly states a requirement for the agencies to evaluate the reasonably foreseeable significant adverse impacts.

Comment: The final amendment should require agencies to address high probability/low or chronic impacts, as well as low probability/catastrophic impacts.

Response: If there is a high probability of an impact occurring, an agency is probably not in the realm of incomplete or unavailable information; hence, the impacts would be analyzed under the ordinary requirements in the "Environmental consequences" section. This section includes the analysis of the environmental impacts of the proposal and the environmental impacts of alternatives to the proposed action. 40 CFR 1502.16.

Comment: The preamble to the draft amendment errs in asserting that case law has established a precedent to go beyond the rule of reason and it ignores subsequent Ninth Circuit case law which applies the rule of reason to find that agencies properly refused to prepare a worst case analysis.

Response: The Ninth Circuit decision referred to in this comment held that a worst case analysis was not required because the lead agency had obtained the information which it needed; thus there was no incomplete or unavailable information to trigger the worst case analysis requirement. *Friends of Endangered Species* v. *Jantzen*, 760 F.2d 976 (9th Cir. 1985).

Comment: The threshold triggering the agency's responsibility to comply with 40 CFR 1502.22(b) is actually the existance of incomplete or unavailable information. "Scientific credibility" is not a threshold, but rather a standard to be applied to the analysis once the duty to comply is triggered.

Response: This comment is correct.

Comment: The Council should make clear in the regulation itself that "scientific credibility" is the threshold which triggers the regulation.

Response: "Scientific credibility" is the criterion for the evidence which should be used to evaluate impacts in the face of incomplete or unavailable information. The trigger to comply with the regulation itself is incomplete or unavailable information.

Comment: If the phrase "worst case analysis" is unacceptable, the Council should consider replacing the term with

its functional equivalent, "spectrum of events".

Response: In the final regulation, a lead agency is required to evaluate "impacts". "Impacts" or "effects" (the two are synonymous under CEQ regulations) are the subject of analysis in an EIS, not "events". Indeed, the event to be anticipated is the proposed action itself.

Under the final regulation, agencies are required to evaluate impacts for which there is credible scientific evidence. In implementing this section, agencies will have to determine the appropriate range of analysis based on the unique facts of each particular proposal. In some cases, this may amount to a spectrum or range of impacts. In other cases, the scope of suggested impacts may be much more limited. Credible scientific evidence should determine the scope of the analysis, as opposed to a pre-determined number of impacts.

Comment: A careful reading of the case law reveals that neither the Ninth Circuit nor any other circuit has required worst case analysis in the absence of scientific opinion, evidence, and experience, as alleged in the draft preamble.

Response: Although CEQ was asked to consider this question by various persons who were concerned about the effect in future cases of possible interpretations of judicial decisions involving the worst case analysis requirement, CEQ has amended the regulation because it believes, based on further review, that the worst case analysis requirement is flawed, and the new requirements provide a better and more logical means of dealing with the analysis of impacts in the face of incomplete or unavailable information in an EIS.

Comment: Deletion of the worst case requirement will weaken environmental protection.

Response: This assertion is incorrect. The amended regulation establishes a better approach to dealing with the issue of incomplete and unavailable information in an EIS. It is a less sensational approach, but one which is a more careful and professional approach to the analysis of impacts in the face of incomplete or unavailable information. It should improve the quality of the EIS and the decision which follows, and, hence, strengthen environmental protection, in conformance with the purpose and goals of NEPA. 42 U.S.C. 4321, 4331. It will provide the public and the decisionmaker with an improved and more informed basis for the decision.

Comment: Before eliminating the term "worst case analysis", the Council should determine whether a worst case analysis is really impossible to prepare, or whether it is being resisted by agencies unwilling to learn because they do not want to admit the adverse impacts of their preferred programs.

Response: The Council does not maintain that a worst case analysis is impossible to prepare; however, it does view the worst case analysis requirement as a flawed technique to analyze impacts in the face of incomplete or unavailable information. The new requirement will provide more accurate and relevant information about reasonably foreseeable significant adverse impacts. To the extent that agencies were reluctant to discuss such impacts under the requirements of the original regulation, the amended regulation will not offer them an escape route.

Comment: The expressed need for clarification can be met by simply adding the "rule of reason" to the existing regulation.

Response: While the "rule of reason" is indeed added to the language of the regulation, CEQ believes that it is also important to amend the requirement to prepare a worst case analysis. The requirement that the analysis of impacts be based on credible scientific evidence is viewed as a specific component of the "rule of reason".

Comment: The proposal inappropriately removes the obligation to weigh the need for an action against its potential impacts.

Response: The regulation deletes this requirement because it is more properly accomplished at the conclusion of the entire NEPA process. A decisionmaker may, of course, decide to withdraw a proposal at any stage of the NEPA process for any reason, including the belief that the paucity of information undermines the wisdom of proceeding in the face of possibly severe impacts. However, such weighing and balancing in the middle of EIS preparation is a matter of policy, not law.

It is clear that, "one of the costs that must be weighed by decisionmakers is the cost of uncertainty—i.e., the costs of proceeding without more and better information." *Alaska v. Andrus*, 580 F.2d 465, 473 (D.C. Cir. 1978). However, that weighing takes place after completion of the EIS process, including the public comment process. Indeed, it would seem that the results of such a weighing process would naturally be more informed and wiser after the agency has completed the requirements of § 1502.22 to evaluate the potential impacts in the face of incomplete or unavailable information. After completion of the EIS process, the responsible decisionmaker must then weigh the costs of proceeding in the face of uncertainty, "and where the responsible decision-maker has decided that it is outweighed by the benefits of proceeding with the project without further delay . . ." he may proceed to do so. *Id.* Similarly, he or she may also decide, with the benefit of the best possible information, to delay the project until further information is obtained or to cancel the project altogether.

Comment: CEQ should provide additional guidance about the new regulation, and oversee and actively monitor its implementation.

Response: CEQ plans to provide additional guidance about the new regulation in the form of an amended question 20 of *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations.* CEQ also plans to actively monitor the implementation of the amended regulation, and evaluate its effectiveness after it has been implemented for a sufficient period of time to make a reasonable assessment.

Comment: It is unclear in which situations the new rule would apply, and what specific information it mandates. CEQ should apply the rule to actual or hypothetical situations and explain how the rule will apply and how the agencies' obligations differ under the new rule from those of the old. Request the Council provide such an analysis for particular fact patterns.

Response: CEQ plans to provide specific examples of the application of the rule to hypothetical situations in its guidance, following issuance of the final rule. The amended regulation will apply, of course, to the very same situations to which the original regulation applies; that is, the existence of incomplete or unavailable information related to significant adverse impacts on the human environment. The modifications to the regulation are designed to better articulate the precise requirements with which an agency must comply once it finds itself in this situation.

Comment: It is essential to mention the Committee of Scientists which was instrumental in development of the proposed regulation.

Response: The writer is probably referring to a proposed Advisory Committee on Worst Case Analysis, which would have included scientists. The Committee was never formed, and thus had no role in developing the amended regulation. Instead, the Council sought public comment through the process of asking questions in the

Advance Notice of Proposed Rulemaking.

Comment: CEQ should state that this analysis is to be done only in conjunction with an EIS, as opposed to an environmental assessment.

Response: Section 1502.22 is part of the set of regulations which govern the EIS process, as opposed to the preparation of an environmental assessment. *It is only appropriate to require this level of analysis when an agency is preparing an EIS.* The type of analysis called for in § 1502.22 is clearly much more sophisticated and detailed than the scope of an environmental assessment. Environmental assessments should be concise public documents which *briefly* provide sufficient analysis for determining whether to prepare an EIS, and aid in an agency's compliance with NEPA when no EIS is necessary. "Since the EA [environmental assessment] is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered". The Council's suggested page limit for environmental assessments are ten to fifteen pages. *Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations,* Question 36a, 46 FR 18026, 18037 (1981).

Comment: CEQ should state clearly that the amendment is intended to repudiate and overrule the Ninth Circuit decisions on worst case analysis.

Response: The Ninth Circuit opinions are based on the requirements of former § 1502.22, or agency reflections thereof, and are inapplicable to this revision. The regulation is being amended to provide a better approach to the problem of analyzing environmental impacts in the face of incomplete or unavailable information. Because the requirements of the amended regulation are more clearly articulated and manageable than the "worst case analysis" requirement, CEQ expects that there will be less litigation based on § 1502.22 than the former version of § 1502.22 interpreted by the Ninth Circuit.

Comment: CEQ should withdraw the guidance contained in the 1981 publication, *Forty Most Asked Questions about CEQ's NEPA Regulations,* relating to worst case analysis.

Response: That guidance is withdrawn by this publication.

Comment: CEQ has not complied with its duties to assert its substantive powers over federal agencies to comply with NEPA, to coordinate programs, and to issue instructions to agencies, but has instead succumbed to pressure from defendant agencies and their attorneys to amend the regulation. Further, CEQ is collaterally estopped from overruling the Ninth Circuit decisions.

Response: CEQ manifests its oversight of the NEPA process in a number of ways on a daily basis; for example, review of agency NEPA procedures, resolving referrals of proposals of major federal actions, and assisting parties on an individual basis in resolving difficulties with the NEPA process. The requirements of the amended regulation are a more productive use of the agencies' resources than attempting to prepare a worst case analysis. Collateral estoppel is a doctrine by which a party may be barred from relitigating a question decided in a prior case. It does not bar an agency from changing a regulation that the courts have interpreted.

Comment: Agencies should be required to present an evaluation of the existing evidence of the most likely outcome.

Response: Step four of subsection (b) requires agencies to evaluate potential impacts. The lead agency may wish to specify which of the impacts are the most likely to occur, and the Council encourages inclusion of such data when it is reliable information which would be useful to the decisionmaker and the public.

Comment: Case law required worst case analysis prior to adoption of 40 CFR 1502.22.

Response: This assertion is incorrect. Case law prior to the adoption of 40 CFR 1502.22 *did* require agencies to make a "good faith effort . . . to describe the reasonably foreseeable environmental impact(s)" of the proposal and alternatives to the proposal in the face of incomplete or unavailable information, consistent with the "rule of reason". *Scientists' Institute for Public Information* v. *Atomic Energy Commission,* 481 F.2d 1079, 1092 (D.C. Cir. 1973). The "worst case analysis" requirement was a technique adopted by CEQ as a means of achieving the goals enunciated in such case law. The "worst case" requirement itself, however, was clearly a "major innovation". Comment, *New Rules for the NEPA Process: CEQ Establishes Uniform Procedures to Improve Implementation,* 9 Envt'l L.Rep. 10,005, 10,008 (1979). The U.S. Court of Appeals for the Fifth Circuit, interpreting the "worst case analysis" requirement for the first time in a litigation context, recognized that it was an innovation of CEQ. *Sierra Club* v. *Sigler,* 695 F.2d 957, 972 (5th Cir. 1983). CEQ has since observed difficulties with the technique of "worst case analysis" and is replacing it with a better approach to the problem of incomplete or unavailable information in an EIS.

List of Subjects in 40 CFR Part 1502

Environmental impact statements.

PART 1502—[Amended].

40 CFR Part 1502 is amended as follows:

1. The authority citation for Part 1502 continues to read:

Authority: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), sec. 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and E.O. 11514 (Mar. 5, 1970, as amended by E.O. 11991, May 24, 1977).

2. Section 1502.22 is revised to read as follows:

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information, the agency shall always make clear that such information is lacking.

(a) If the incomplete information relevant to reasonably foreseeable significant adverse impacts is essential to a reasoned choice among alternatives and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known, the agency shall include within the environmental impact statement: (1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community. For the purposes of this section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure

conjecture, and is within the rule of reason.

(c) The amended regulation will be applicable to all environmental impact statements for which a Notice of Intent (40 CFR 1508.22) is published in the **Federal Register** on or after May 27, 1986. For environmental impact statements in progress, agencies may choose to comply with the requirements of either the original or amended regulation.

Dated: April 21, 1986.

A. Alan Hill,

Chairman.

[FR Doc. 86-9270 Filed 4-24-86; 8:45 am]

BILLING CODE 3125-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 73

Standards of Conduct—Participation in Matters Affecting a Financial Interest—Exemption of Employment at One Campus of Certain Multi-Campus Colleges and Universities as a Restriction on the Review of a Funding Application from a Separate Campus by Special Government Employees

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: This Rule amends the Standards of Conduct regulations, 45 CFR 73.735-1004 by adding new paragraph (c) to exempt, in certain circumstances, faculty members of certain multi-campus colleges and universities, who serve as experts and consultants to the Department, from the prohibition against Federal employees participating in matters affecting the financial interest of the institution by which they are employed. Currently, experts and consultants performing services for the Department who are affiliated with multi-campus institutions of higher education are precluded from participating in matters which affect one campus within their university system even though they are employed at a separate campus. As authorized by 18 U.S.C. 208(b), the Secretary has determined that such an interest is too inconsequential and too remote to affect the integrity of the services performed for the Department by these individuals.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT: Timothy M. White, Office of the General Counsel, Business and Administrative Law Division (202) 475-0153.

SUPPLEMENTARY INFORMATION: The Federal Conflict of Interest statutes, 18 U.S.C. 208, prohibit an officer or employee of the United States Government, including special government employees, from participating personally and substantially as a Government officer or employee in any contract, claim, controversy or other particular matter in which, to his knowledge, an organization in which he is serving as an officer or employee has a financial interest. As explained in the DHHS Standards of Conduct, 45 CFR 73.735-801 *et seq.*, the restrictions of section 208 require Government employees to be disqualified from participating as such in a matter of any type, the outcome of which will have a direct and predictable effect upon the financial interest covered by section 208.

Under the restrictions of 18 U.S.C. 208, some experts, consultants, and other temporary employees who are employed by a multi-campus college or university and who review applications for grants and contract proposals for the Department may be disqualified from reviewing an application or proposal from their employing institution even though they are employed at a separate campus and have no connection with the application other than that employment. The basis for disqualification is the financial interest of the institution in the application. Disqualification of these reviewers poses significant administrative burdens upon the Department, particularly considering the difficulty in recruiting experts in various fields to perform review functions. Furthermore, the Secretary has determined that any interest of an employee in a separate campus within a multi-campus institution would be too remote or too inconsequential to affect the integrity of the employee's review of an application for funding from a different campus of the multi-campus institution.

In an opinion dated February 12, 1982, the Office of Government Ethics (OGE) advised this Department: (1) Where a reviewer is an employee of a State institution of higher education, he or she may participate in the review of an application from another department or agency of the state, when the employing institution and the applicant agency are not part of the same organization for purposes of 18 U.S.C. 208; (2) if a State has established and provides funds to its institutions of higher education separately rather than through a system, those institutions are considered distinct from one another, as well as from the rest of State government; (3) because of the diversity among the states, no general rule can be formulated for the status, under section 208, of separate educational systems within a state or of individual institutions within a system. However, it may be determined that separate systems within a state, or separate institutions within a system, are not the same "organization" within the meaning of section 208(a). Furthermore, an agency may grant waivers under 208(b) if it takes into account such factors as the statues establishing the university system or systems, the manner in which grants and contracts are sought (by institution or by system), the entity being reimbursed for the indirect costs of a grant or contract, and the entity accountable for the awarded funds. The OGE opinion noted, for example, that the University of Colorado and Colorado State University were separate institutions within that state and that the University of California, the California State Universities and Colleges, and the California Community Colleges were separate systems within that State.

Subsequent to the OGE opinion, we have determined that certain institutions are separate "organizations" within the meaning of 18 U.S.C. 208(a) so that a waiver is unnecessary. Those systems or institution are listed in subparagraph (c)(2). In addition, we have determined that other multi-campus institutions and systems are eligible for a waiver under 18 U.S.C. 208(b). Those systems and institutions are listed in subparagraph (c)(1).

18 U.S.C. 208(b) provides for a waiver of the disqualification in 18 U.S.C. 208(a) if the Secretary by general rule or regulation published in the **Federal Register** exempts the financial interest as being too remote or too inconsequential to affect the integrity of the services to be provided by the Government employee. In addition, section 208(b) provides for waivers on a case-by-case basis upon a written determination by the appointing Government official that the affected interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government.

This rule grants a waiver of the prohibitions of 18 U.S.C. 208(a), and of the Department regulations implementing that statute, where part-time intermittent employees responsible for the review of funding applications and contract proposals have an interest in a particular application or proposal which consists solely of employment as a faculty member at a campus of a multi-campus institution or system of

higher education which is separate from the campus from which the application originated. This waiver is limited to the institutions and systems listed for which a determination has been made, based on information provided by the institutions, that because the campuses are sufficiently separate, the financial interest created by the employment at one campus is too remote or too inconsequential to affect the integrity of a part-time or intermittent Government employee's review of an application from another campus of the institution. Waivers of the restrictions of 18 U.S.C. 208(a) for those employees from multi-campus institutions which are not included on the list published with this rule may continue to be considered on a case-by-case basis.

The regulation also is amended to list those state institutions of higher education which are so separate (separate systems or separate individual institutions) that they are not within the same "organization" for purposes of 18 U.S.C. 208(a). Thus, no waiver is necessary for these institutions.

This rule pertains to internal personnel management and is exempt from the notice and comment procedures.

Economic Impact

The Secretary has determined that this is not a "major" regulation within Executive Order 12291.

Regulatory Flexibility Act

The Secretary has determined that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only individual special government employees of the Department.

List of Subjects in 45 CFR Part 73

Standards of conduct, Experts, Consultants and advisory committee members.

PART 73—[AMENDED]

Section 73.735–1004 of Title 45 Code of Federal Regulations is amended by adding a new paragraph (c), as follows:

§ 73.735–1004 Requesting waivers or exemptions.

(a) * * *

(b) * * *

(c)(1) *Waiver for reviewers from certain multi-campus institutions.* Applicability of the prohibitions of 18 U.S.C. 208(a) and this subpart are hereby waived pursuant to a determination that the interest involved is too remote or too inconsequential to affect the integrity of a special Government employee's review of a funding application or contract proposal from one campus of one of the following multi-campus institutions, where the interest consists solely of employment as a faculty member (including Department Chairman) at a separate campus of the same multi-campus institution:

The University of Alabama system consisting of the University of Alabama, the University of Alabama in Birmingham, and the University of Alabama in Huntsville.

The campuses of the University of California.

The system consisting of Colorado State University, the University of Southern Colorado, and Fort Lewis College.

The Indiana University system consisting of eight universities on nine campuses, with the exception of the system-wide schools: the School of Business; the School of Dentistry; the School of Medicine; the School of Nursing; and the School of Public and Environmental Affairs.

The University of Nebraska system consisting of the University of Nebraska—Lincoln, the University of Nebraska at Omaha, and the University of Nebraska Medical Center.

The campuses of the State University of New York.

The Oregon system of higher education consisting of the University of Oregon, Oregon State University, Oregon Health Sciences University, Portland State University, Western Oregon State College, Southern Oregon State College, Eastern Oregon State College, and the Oregon Institute of Technology.

The campuses of the University of Tennessee.

The separate universities comprising the University of Texas System.

The separate universities comprising the University of Wisconsin System.

(2) *Institutions that are not subject to 18 U.S.C. 208(a) and the subpart, because they are not part of the same organization within the State.* The following State institutions and systems of higher education have been determined to be separate from each other to such a degree that no waiver is necessary in order to permit a faculty member (including Department Chairman) employed by one of the State institutions of higher education to review a funding application or contract proposal from another of the named institutions within that State:

The University of Alabama System and other Alabama State owned institutions of higher education.

The California Community Colleges, the California State Universities and Colleges, and the University of California.

The University of Colorado, Colorado State University, and other Colorado State owned institutions of higher education.

The University of Connecticut, Connecticut State University, the Connecticut Technical Colleges, and the Connecticut Community Colleges.

The University of Illinois, Illinois State University, Western Illinois University, Southern Illinois University, and the Illinois Community Colleges.

The Indiana University and the other Indiana State owned institutions of higher education.

The University of Iowa, and Iowa State University.

The University of Kansas, Kansas State University, Wichita State University, Fort Hays State University, Pittsburg State University, and the Kansas Technological Institute.

Louisiana State University, and other Louisiana State owned institutions of higher education.

The University of Massachusetts, and other Massachusetts State owned institutions of higher education.

The University of Michigan, Michigan State University, and Wayne State University.

The University of Minnesota, the Minnesota State University System, and the Minnesota Community College System.

The University of Missouri, and other Missouri State owned institutions of higher education.

The University of Nebraska, and other Nebraska State owned institutions of higher education.

The State University of New York System, and the City University of New York System.

The University of North Carolina, North Carolina State, and other North Carolina State owned institutions of higher education.

Pennsylvania State University, the University of Pittsburgh, Temple University, Lincoln University, and the other State owned colleges and universities in Pennsylvania.

The University of Texas System, the Texas A&M System, the Texas State University System, the University System of South Texas, the Lamar University System, the University of Houston System, East Texas State University, Stephen F. Austin State University, West Texas State University, Midwestern University, North Texas State University, Texas Southern University, Texas Woman's

University, Texas Tech University and Pan American University.

The University of Utah and Utah State University.

Dated: April 4, 1986.

Otis R. Bowen,

Secretary.

[FR Doc. 86-9325 Filed 4-24-86; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MM Docket No. 85-41; RM-4864; FCC 86-117]

Educational Television Stations; Commercial and Noncommercial Channel Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends the Commission's Rules to permit modification of licenses (and permits) to other channels within the same band pursuant to channel exchange agreements between commercial and noncommercial educational television stations upon a finding that the public interest will be served. The proposed exchanges will be considered in the context of rule making proceedings to amend the TV Table of Assignments. This action is taken in response to a petition filed by the permittees of noncommercial Channel *50 and commercial Channel 56 in Gary, Indiana.

EFFECTIVE DATE: May 23, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85-41, adopted March 13, 1986, and released March 21, 1986.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 1440, Washington, DC 20037.

Summary of Report and Order

1. The Commission amends § 1.420 of its Rules by adding a new paragraph (h). This action provides a new procedure whereby the Commission may, upon finding that the public interest, convenience, and necessity will be advanced thereby, modify television licenses and permits and switch educational channel reservations in the course of rule making proceedings amending the Television Table of Assignments, § 73.606(b) of the Rules. Such modifications and reservations switches would be in response to joint petitions filed by commercial and noncommercial educational television licensees and permittees seeking to exchange channels within the same band (*i.e.* UHF for UHF and VHF for VHF) and in substantially the same market.

2. The instant proceeding was commenced in response to a proposal by the permittees of Channels *50 and 56 Gary, Indiana to exchange channels and to institute a procedure to do so without jeopardizing their authorizations. Under existing Commission assignment procedures, if, during rule making proceedings other parties express interest in applying for the channels being exchanged, the process generally is terminated, as petitioners decline to risk their current authorizations and withdraw their rule making requests. Thus, there is no competition for the channels in question, and potentially beneficial exchanges are not effectuated. Termination also means that Commission, petitioner, and public resources are wasted. Existing procedures can be abused by competitors who can cause the filing of interests to delay or block enhanced service. Further, when otherwise benefical requests are withdrawn, the opportunity for a more efficient utilization of the spectrum as provided for in section 307(b) of the Communications Act of 1934, as amended, is lost.

3. Many commenters expressing reservations about the new procedure focused on exchanges of VHF noncommercial channels for UHF commercial channels. While many of their objections to such inter-band exchanges may be significant in the context of specific proposals, they do not justify *per se* rejection of the new procedure insofar as it provides for intra-band (*i.e.* UHF-UHF and VHF-VHF) transactions. Thus, the Commission here addresses only intra-band exchanges.

4. The Commission concludes that intra-band exchanges are desirable because of the resulting benefits to participating stations and thereby to the public. Such benefits include the opportunity to move to a more favorable transmitter site, savings in operating costs, and financial advantages. Particular benefits which accrue to noncommercial educational stations include the consideration received from commercial stations as inducement to enter exchange agreements. Accordingly, the Commission here provides for individual rule making proceedings in which it will consider specific exchange proposals. Where the Commission determines that specific exchanges would provide sufficient public interest benefits, it will amend the Table of Assignments and modify the authorizations of petitioners pursuant to "show cause" procedures contained in section 316 of the Act.

5. Providing for channel exchanges and amendments to the Table of Assignments is consistent with recent Commission action encouraging its broadcast licensees to improve service to the public by enhancing their facilities. Channel exchanges will not eliminate educational reservations. Rather, they may facilitate the introduction of noncommercial educational service.

6. The Commission has legal authority to provide for commercial and noncommercial television channel exchanges. Section 316 contains statutory authority to modify authorizations where such action furthers the public interest. That section has often been used in response to licensee requests for modification to other channels, and the Commission's ability to act in the public interest does not depend on whether it acted of its own initiative or pursuant to a licensee petition. Since the channels which are subject to specific exchange proposals are occupied by petitioners, they are not otherwise available for application by others. Rather, they are available only to potential exchange partners. Since petitioners would withdraw in the face of other interest, other interested parties have no comparative application rights pursuant to section 309 of the Act, and the rule of *Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327 (1945), does not apply here. Commercial-noncommercial channel exchanges are more akin to the situations before the Commission in *Malrite of New York, Inc.*, FCC 84-338, released July 31, 1984, and in *Storer Brodcasting* v. *F.C.C.*, 361 U.S. 192 (1956), where the opportunities to file competing applications were limited in order to advance public interest objectives. Further, subsequent "spirit of

Ashbacker" cases are also inapplicable here, as the opportunity to apply for the affected channels is merely theoretical and does not offer the possibility for a wider selection of applicants to choose from.

7. The Commission initiated this proceeding to consider changes in its license modification policy. That policy, derived from principles espoused in *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), and in *Ashbacker*, limited modifications to situations where no other interests were expressed. However, the Commission has never previously directly faced the issue in the context of channel exchanges. Its experience subsequent to *San Francisco and San Mateo, California*, 68 F.C.C. 2d 80 (1978), *recon. denied*, 45 R.R. 2d 233 (1979), in this area leads it to conclude that application of *Ashbacker* and its progeny to channel exchanges is inappropriate. The Commission also has the advantage of the comments in this proceeding regarding potential public interest benefits. Further, while not explicitly relying on it, the Commission believes that the policy underlying section 310(d) of the Act is analogous to that underlying the new procedure. That section was enacted to prohibit comparative consideration of third party interests in commercial license transfers and assignments.

8. In light of public television's unique service, a significant factor in the Commission's public interest determination in individual rule making proceedings will be the extent to which the noncommercial station will subsequently be able to continue to serve its audience in terms of both signal reach and quality. The Commission will not require that such a station share the proceeds received for the channel exchange with other noncommercial broadcast entities. The Commission is reluctant to reduce or eliminate incentives to otherwise beneficial exchanges, because viewers are arguably entitled to the full benefits of such transactions and because of practical problems where the consideration consists of assets other than cash. In light of the purpose underlying the new procedure, noncommercial petitioners are expected to provide assurances that proceeds will be devoted to broadcast operations. In order to maximize potential benefits to the public, the Commission will consider proposals involving separate communities. However, the new procedure will not apply where stations seek to change their communities of license. Because this procedure could enable permittees to acquire the resources to construct facilities and commence operations, it is available to permittees as well as licensees. In this regard, absent assurances that the consideration received by noncommercial permittees would be so utilized, it is unlikely that the Commission could find the requisite public interest benefits to warrant modifications and reservations switches. In individual rule making proceedings, the Commission will also assume that licensees are more familiar with the needs of their audiences and will, accordingly, give significant weight to the determinations of directors of public stations. The Commission recognizes that all petitioning parties have substantial incentives to reach exchange agreements serving the best interests of their audiences. However, opponents of specific proposals will be invited to comment fully on the extent to which petitioners bargained in good faith to benefit the public.

9. In light of this action, petitioners' request to bifurcate this proceeding by granting expedited consideration to its Gary proposal is moot. In this regard, the staff is instructed to prepare a *Notice of Proposed Rule Making* pertaining to the Gary channel exchange proposal.

10. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, a final regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor.

11. The Rule contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements and will not increase or decrease burden hours imposed on the public.

12. Accordingly, It Is Ordered, that Part I of the Commission's rules and regulations Is Amended, effective May 23, 1986.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 1 continues to read as follows:

Authority: Sections 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply Sections 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

PART 1—[AMENDED]

2. Section 1.420(h) is added to read as follows:

§ 1.420 Additional Procedures in Proceedings for Amendment of the FM, Television or Air-Ground Table of Assignments.

* * * * *

(h) Where licensees (or permittees) of television broadcast stations jointly petition to amend § 73.606(b) and to exchange channels, and where one of the licensees (or permittees) operates on a commercial channel while the other operates on a reserved noncommercial educational channel within the same band, and the stations serve substantially the same market, then the Commission may amend § 73.606(b) and modify the licenses (or permits) of the petitioners to specify operation on the appropriate channels upon a finding that such action will promote the public interest, convenience, and necessity.

William J. Tricarico,

Secretary.

[FR Doc. 86-9137 Filed 4-24-86; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

Commission Organization; Delegations of Authority—Office of Public Assistance

AGENCY: Interstate Commerce Commission.

ACTION: Final rules: Delegations of authority.

SUMMARY: The purpose of this document is to revise the Commission's delegations of authority by redesignating the Office of Special Counsel as the Office of Public Assistance. In assisting the Commission and the public in determining the public interest, the new Office of Public Assistance will assume the responsibilities previously assigned to the Office of Special Counsel, the Small Business Assistance Office, and the State/Community Affairs Liaison position formerly in the Office of Legislation and Governmental Affairs. Because this rule change involves the internal organization and procedures of the Commission, it is issued in final form and public comment is not being requested.

EFFECTIVE DATE: April 25, 1986.

FOR FURTHER INFORMATION CONTACT:
Kathleen King, 202–275–0956
Samuel Ewer Eastman, Director and Special Counsel (Acting), 202–275–7411

SUPPLEMENTARY INFORMATION: This revised delegation of authority reflects the establishment of a new office which assumes the responsibilities previously assigned to the Office of Special Counsel, the Small Business Assistance Office, and the State/Community Affairs Liaison. The Office of Public Assistance will assist the Commission and the public in determining and representing the public interest, with regard to the Interstate Commerce Act and related statutes.

In particular, the Office will act as the focal point to coordinate Commission activities insuring: (1) That the public interest is fully developed in proceedings before the Commission; (2) that small and minority owned transportation entities, transportation related entities, consumer groups, small communities, carriers and shippers, and State regulatory officials are advised on the applicability and interpretation of the law, and the availability of assistance from the Commission, as this applies to their enterprise; and (3) that the Commission is advised on policy matters related to its small business assistance functions and programs.

Consistent with the limitations previously imposed on the Office of Special Counsel, the Office will participate formally in Commission proceedings only upon submission of a petition to do so and approval of the petition by a majority of the Commission.

This action will not have a significant effect on a substantial number of small entities because it involves only the internal organization and procedures of the Commission.

This action will not have a significant impact on the quality of the human environment or the conservation of energy resources.

It is ordered

The amendment set forth in the appendix is adopted, effective on the date of **Federal Register** publication.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions.

Decided: April 9, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Vice Chairman Simmons would have retained the designation "Office of Special Counsel".

James H. Bayne,
Secretary.

Appendix

Part 1011 of Title 49 of the Code of Federal Regulations is amended to read as follows:

PART 1011—[AMENDED]

(1) The authority citation for Part 1011 is revised to read as follows:

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

(2) Title 49 CFR 1011.8(a) is revised to read as follows:

§ 1011.8 Delegation of authority by the Interstate Commerce Commission to specific bureaus and offices of the Commission.

(a) *Office of Public Assistance.* (1) There is established an Office of Public Assistance. The Office assumes the functions previously assigned to the former Office of Special Counsel, the former Small Business Assistance Office, and the State/Community Affairs Liaison position formerly in the Office of Legislation and Governmental Affairs. (2) The Office shall be managed by a Director, who will also serve as Special Counsel of the Commission, and by a Deputy Director, who will also serve as the Small Business Assistance Officer of the Commission. The Special Counsel shall be appointed by the Chairman, subject to the approval of a majority of the Commission. (3) The mission of the Office will be to assist the Commission and the public in determining and representing the public interest, with regard to the Interstate Commerce Act and related statutes. The primary function of the Office is to act as the focal point to coordinate Commission activities insuring: (i) That the public interest is fully developed in proceedings before the Commission and especially to contribute to the development of a complete record in proceedings in which important aspects of the public interest otherwise would not be adequately explored, in particular, proceedings affecting the interests of bus passengers, household goods shippers, owner operators, and Class II and III rail carriers and the shippers they serve; (ii) that small and minority owned transportation entities, transportation related entities, consumer groups, small communities, carriers and shippers, and State regulatory officials are advised on the applicability and interpretation of the law, and the availability of assistance from the Commission as this applies to their enterprise; and (iii) that the Commission is advised on policy matters related to its small business assistance functions and programs. (4) The Office will participate as a party in Commission proceedings, including rulemaking proceedings, only upon submission of a petition to do so and approval of the petition by a majority of the Commission. (5) So that parties having need of the assistance of the Office will be adequately informed, the Office of Hearings is directed in noticing cases for public hearings, to advise parties of the availability of this program.

* * * * *

[FR Doc. 86–9219 Filed 4–24–86; 8:45 am]
BILLING CODE 7035–01–M

Proposed Rules

Federal Register
Vol. 51, No. 80
Friday, April 25, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1701

[REA Bulletin 384-1]

Telephone Borrowers; Purchasing and Installing Central Office Equipment

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: REA proposes to amend Appendix A—REA Bulletins by issuing a supplementary to REA Bulletin 384–1, "Purchasing and Installing Central Office Equipment, in the form of a "File With" memorandum from the Administrator. The supplement will change the procedure for awarding competitive bids for central office equipment. At present, the award is made on the basis of bids which exclude the price of spare parts required for proper operation even though the bidders are required to show the price of the spare parts as an alternate and the purchaser almost always purchases the spare parts at the bid price. The proposed procedure would require that the cost of spare parts be included in calculating the price of the bid to be used in awarding the contract. This proposed action will impact REA borrowers and their consulting engineers as well as the manufacturers which bid on competitive contracts for central office equipment.

DATE: Public comments must be received by REA no later than June 24, 1986.

ADDRESS: Submit written comments to M. Wilson Magruder, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Arthur H. Marthens, Chief, Central Office Equipment Branch, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Washington, DC 20250, telephone (202) 382–8671. The Draft Impact Analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from the above office.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to amend Appendix A—REA Bulletins by issuing a supplement to REA Bulletin 384–1, Purchasing and Installing Central Office Equipment, in the form of a "File With" memorandum from the Administrator. This proposed action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major". This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy act of 1969 (42 U.S.C. 432 *et seq.* (1976)) and, therefore does not require an environmental impact statement or an environmental assessment. This regulation contains no information or recordkeeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*). This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Copies of the document are available upon request from the address indicated above. Interested persons are invited to submit comments on this action. Written comments must be sent to the address stated above. All written submissions made pursuant to this action will be made available for public inspection during regular business hours at the above address.

Background

REA has issued a series of publications entitled "bulletins" which serve to implement the policy, procedures and requirements for administering its loan and loan guarantee programs and the security instruments which provide for and secure REA financing. REA Bulletin 384–1 sets forth the methods and procedures to be employed by REA telephone borrowers in purchasing and installing central office equipment with REA loan funds. REA is proposing to supplement Bulletin 384–1 in the form of a "File With" memorandum from the Administrator. The supplement will modify the procedure by which competitive bids are awarded so as to include, rather than exclude the cost of spare parts in awarding of the bid. At present, the award is made on the basis of bids which exclude the price of spare parts required for proper operation even though the bidders are required to show the price of the spare parts as an alternate. In most cases the REA borrower purchases the spare parts alternate. Under the existing procedures, it is possible for a supplier to bid low on the base price and bid high on the spare parts. The spare parts, for the most part, are essential for proper operation in the field and available only from the original supplier. As a result the bid may go to a supplier who has deliberately bid low, but the REA borrower has no choice but to pay for the spare parts. When the total price is compared to that from another supplier it is possible that the other supplier's total price is less than the successful bidder. The purpose of this action is to prevent this situation by awarding the bid on the basis of the total price, including spare parts. To include the price of the spare parts in the base bid, it becomes necessary to change procedure to quantify the number and type of spare parts to be furnished so that bids can be compared on a fair basis. REA proposes to classify

the spare parts by importance and then quantify the spare parts by classification. The proposed action should result in lower first costs for central office equipment for REA telephone borrowers.

List of Subjects in 7 CFR Part 1701

Loan programs—communications, Telecommunications, Telephone.

Dated: April 11, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-9284 Filed 4-24-86; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF ENERGY

10 CFR Part 762

Proposed Uranium Enrichment Services Criteria

AGENCY: Department of Energy.

ACTION: Proposed rule; Additional Information and Comment Period.

SUMMARY: The Department of Energy (DOE) is responding to requests for further analysis with respect to those provisions of the proposed uranium enrichment criteria which relate to (1) the "enrichment of foreign origin uranium" and (2) the "recovery of prior government costs." After careful consideration, DOE has determined that the analysis of the "enrichment of foreign origin uranium" provision in the preamble to the proposed criteria provides a clear and complete discussion of DOE's initial position. Accordingly, DOE has determined further analysis is unnecessary. However, DOE has determined additional analysis and information on issues related to "recovery of prior government costs" would be helpful in developing the rulemaking record on which DOE will make its final decision. In order to permit comments in light of this response, DOE is providing for an additional written comment period of thirty days.

DATES: Written comments must be submitted by May 27, 1986, to the address below.

ADDRESS: Mr. John P. Thereault, Office of Technology, Deployment and Strategic Planning, Office of Uranium Enrichment, Room A-172, Germantown, MD 20545.

FOR FURTHER INFORMATION CONTACT:

John Thereault, Office of Uranium Enrichment, U.S. Department of Energy, Washington, D.C. 20545, (301) 353-4610

Lawrence Leiken, Office of General Counsel, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-6975

Ben McRae, Office of General Counsel, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 29, 1986, DOE proposed several revisions to its Uranium Enrichment Services Criteria [51 FR 3624). DOE requested written comments on this proposal by February 28, 1986, and provided for a public hearing was held on March 18, 1986.

Among the written comments received were requests for additional analysis and information regarding two provisions of the proposed criteria. These provisions are (1) the "enrichment of foreign origin uranium" and (2) the "recovery of prior government costs." These comments also requested an opportunity to submit written comments on that information. On March 12, 1986, DOE indicated that it was in the process of considering these requests (51 FR 8509).

With respect to the "enrichment of foreign origin uranium, the preamble to the proposed criteria describes DOE's position in great detail. In brief, the Atomic Energy Act requires DOE to impose restrictions on the enrichment of foreign origin uranium "to the extent necessary to assure the maintenance of a viable domestic industry." However, in the current and foreseeable marketplace, no restrictions on the enrichment of foreign uranium would, in fact, "assure the maintenance of a viable domestic uranium industry." The plain language of the statute makes clear the restrictions are not to be imposed for their own sake. Rather, DOE has a duty to determine whether their imposition would achieve the statutory objective of assuring the viability of the domestic industry. And, when DOE determines imposition would have a meaningless or counterproductive effect on this objective, DOE should not, and indeed, cannot impose restrictions.

While the Secretary of Energy has determined the domestic mining and milling industry was not viable in 1984, this determination does not authorize or require import restrictions. Such restrictions could not assist the industry in any meaningful way and certainly could not assure its viability. The difficulties currently facing the domestic mining and milling industry stem from a number of factors, none of which would be influenced by import restrictions. Indeed, import restrictions would have no long term positive effect on the consumption of domestic uranium. DOE cannot force enrichment customers to use domestic uranium when it is not in their economic self-interest to do so. To the extent domestic uranium is not competitive with foreign uranium, import restrictions would cause enrichment customers to seek enrichment services abroad. At best, restrictions could result in a very short-term increase in consumption of domestic uranium and, most likely, would have a detrimental effect on the industry.[1]

After reviewing the full discussion on import restrictions in the preamble to the proposed criteria, DOE has determined that the discussion provides a full and complete analysis of DOE's initial position on this issue. As such, interested persons have a more than sufficient basis on which to comment. Accordingly, DOE does not find it necessary to provide additional information on import restrictions.

With respect to the "recovery of prior government costs" a review of the comments on this subject reveals considerable disagreement over the calculation of unrecovered costs. Some commentators have criticized DOE for indicating an excessive amount of unrecovered costs, while others have asserted DOE understated significantly the correct amount of unrecovered costs. In view of these comments, and the fact that pricing for separative work, cost recovery, and cost accounting (including allocation of costs) are interrelated, DOE has determined it would be useful to describe more completely its analysis of these subjects as it relates to the recovery of government costs and their calculation. Accordingly, this Notice sets forth (1) the analytical framework in which DOE considers unrecovered costs and (2) the methodology DOE followed to derive the specific amounts of unrecovered costs described in the preamble to the proposed criteria.

II. Analytical Framework Concerning Pricing for Separative Work, Cost Recovery, and Cost Allocation

DOE's framework for consideration of pricing, cost recovery, and cost allocation issues is its analysis of what the Atomic Energy Act requires. That statute's guidance to DOE in providing

[1] DOEs position is in accord with that of the United States Trade Representative. In his December 24, 1985 response to the Secretary, the Trade Representative rejected import restriction because any relief "would only be short term * * * without resolving the long-term problems of the industry."

enrichment services is set forth in section 161(v), which does not explicitly address cost recovery (let alone "full" cost recovery), cost allocation, or indeed disposition of revenues stemming from toll enrichment services. Section 161(v) does speak expressly to the pricing for separative work, but the entirety of its guidance is that prices "shall be established on a basis of recovery of the Government's costs over a reasonable period of time." In addition, section 161(v) requires DOE to implement this guidance through criteria such as those that are the subject of the current rulemaking.

Bringing meaning to these few words requires resort to the history of their development, as well as their implementation by DOE and its predecessor agencies. Briefly summarized, that history indicates that Congress has mandated, in broad terms, adherence to a cost-based policy in establishing charges for separative work in contrast to a policy intended to yield a profit. Furthermore, that history reveals that while actual costs have been the starting point for determining customer charges, DOE always has considered the extent to which actual costs have been incurred to provide enrichment services to customers and has found it appropriate in establishing charges to include only those actual costs which relate to providing services to customers. From their outset, the enrichment criteria have included a provision under which some, but not all, of plant capacity costs are allocated to customer charges.

The proposed criteria, which allocate only the actual costs of utilized plant capacity to establish charges for separative work, continue both of these traditional aspects of implementing section 161(v). They do so in a way that accurately reflects the current fiscal and operating circumstances of the enrichment program.

Consistent with the requirement of the 1970 amendment to the Atomic Energy Act that established the non-profit policy for establishing charges for enrichment services, DOE's proposed criteria establish charges on a basis of actual costs. The proposed criteria continue in the current factual setting the principle embodied in the original criteria of allocating to the charges for enrichment service only the costs of that part of plant capacity actually used to render enrichment services. In 1966, when the original criteria were first adopted, (31 FR 16479, Dec. 23, 1966), unused plant capacity was excluded under the "Conway formula." The only conceptual difference between the original criteria and the current approach is the absence in the current approach of a specific formula [2] under which unused capacity is excluded from establishing charges. The proposed criteria provide for establishing charges for commercial customers on a basis which recovers appropriate costs determined on a basis that includes the costs incurred in providing enrichment services to those customers.

DOE believes this approach makes common sense, is conceptually consistent with the way separative work has been priced since the beginning of the toll enrichment program, and is entirely consistent with the 1970 amendment to section 161(v) of the Atomic Energy Act. There the Congress rejected a proposal to charge for separative work based upon a hypothetical construct of phantom costs not actually experienced by the Government in providing enrichment services. That proposed policy was perceived by the Congress as a profit-oriented initiative. In the report that accompanied the 1970 legislation, the Joint Committee on Atomic Energy rejected establishing charges for enrichment services based on hypothetical costs. Indeed, the Committee repeatedly described DOE's proper function as established charges not on the basis of full actual costs but only on those of the actual costs that are "appropriate" for recovery from customers. Thus, the 1970 amendment required the pricing policy to be cost-oriented rather than profit-oriented and it required DOE, through the criteria, to determine which costs incurred by the Government were appropriate for recovery in establishing charges for separative work.

Establishing the basis for determining those costs that are "appropriate" for recovery in establishing charges for separative work is left by the Atomic Energy Act for DOE, through the criteria and its actions thereunder, to accomplish. This results necessarily from the approach of the Atomic Energy Act, which specifies resort to criteria and which otherwise is entirely silent on the method of capitalization of the program's assets, accounting procedures to be employed, and disposition of revenues. All of these factors are pertinent to the pricing of separative work, but under the scheme of the Atomic Energy Act are left to the criteria and annual authorization and appropriation acts to establish in detail.

Cash outlay for administering the enrichment program, including provision of toll enrichment services for commercial customers, are determined annually by appropriation acts. Typically, these acts appropriate specific sums for a specific fiscal year, including appropriation of the revenues anticipated to be received that year in connection with providing toll enrichment services. One way to determine whether, and to what extent, unrecovered costs exist would be simply to calculate the net appropriations made for this activity since the program began, by adding all uranium enrichment outlays and then subtracting from that amount the aggregate revenues received in charges for rendering enrichment services. This methodology provides a reasonable picture of how the program is operating on a day-to-day cash basis and, as such, has been used in discussions about the program, including discussions with Congressional Committees considering the amount of unrecovered Government costs. A cash basis methodology, however, does not reflect all costs. The principal dimension lacking in a cash basis method is the value of assets transferred to the program at its beginning (reflecting, of course, expenditures previously made by the Government), including undepreciated plant and equipment, together with interest accrued on that balance.

DOE's annual financial statements for the enrichment program have always reported on an accrual basis *all* cost incurred to provide enrichment services, not just those costs set forth in appropriation acts. Consistent with this approach, the initial annual financial statement used the costs of the transferred assets as the starting point for determining unrecouped Government costs since the Government as a whole sustained a cost in acquiring those assets.

Were the approach for determining appropriate costs to stop at the initial

[2] The formula itself does not appear in the statute and has never appeared in any version of the criteria. Rather, it is the product of a 1966 agreement between the Joint Committee on Atomic Energy and representatives of the Atomic Energy Commission. This history belies the contention the Conway formula is the only exception to "full" cost recovery under section 161(v). None of the discussions surrounding adoption of the Conway formula could have created an exception if section 161(v) required "full" cost recovery. Indeed, the Conway formula was lawful only because section 161(v) does not require full cost recovery. Adoption of the Conway formula confirms DOE's responsibility under section 161(v) to determine which costs are appropriate for recovery. See Uranium Enrichment Services Criteria and Related Matters, Hearings Before the Joint Committee on Atomic Energy, 89th Cong., 2d Sess. (August 2, 3, 4, 16 and 17, 1966) pgs. 32, 61–3. See also October 18, 1966, letter from Chairman Chet Holifield, Joint Committee on Atomic Energy, To Dr. Glenn T. Seaborg, and December 16, 1966, letter from Dr. Seaborg to Chairman Holifield. Both letters are reprinted in the 1966 Hearings at 517–519.

decision to include the cost of an item in the program's annual financial statement, the result would be more consistent with those commentators who have criticized DOE's proposal as understating unrecovered costs. Under such an approach, DOE would never reconsider the utilization of physical assets in behalf of commercial customers and depreciation on these assets would continue to be included in establishing charges whether or not the assets were being used to provide enrichment services. In effect, DOE would never review its determinations of what costs were properly "appropriate" for allocation to commercial customers through charges for separative work.

DOE did not adopt such an approach for several reasons, including DOE's view that the enrichment program historically has been affected by a public as well as a commercial interest, and even in an analogous public utility context ratepayers would not have included in their rate base the costs of assets that are not used and useful. Thus, DOE does not allocate to the costs to be used in establishing charges for separative work those costs associated with unused capacity, including investment associated with a capacity increment that was terminated before being brought on line in commercial production.

DOE believes this approach most fairly accommodates the various objectives of the Atomic Energy Act as a whole, including the governmental as well as the proprietary aspects of the enrichment program itself. It is also an approach that corresponds to, as closely as this Government-financed program can, cost accounting principles that are generally recognized and applied in other major commercial enterprises.

In considering the preceding analysis, it must be kept in mind that determining what costs are appropriate for recovery does not, standing alone, establish prices for separative work. Charges for separative work necessarily include estimates of future costs and judgments about what is the "reasonable period of time" under which those costs should be recovered, as well as consideration of the public interest and other objectives of the Atomic Energy Act. Necessarily they are subject to revision in light of actual experience, including the actual marketplace in which sales of separative work must and will occur in the future.

Finally, it is worth noting that section 161(v) does not indicate what form the disposition of revenues should take. During this period of budget deficits, DOE believes it proper for the disposition of revenues to take the form of payments to the U.S. Treasury and described a proposed payment schedule in the preamble to the proposed criteria. In this regard, DOE is aware that the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 established payment goals of $110 million for FY 1986, $150 million for FY 1987, and $150 million for FY 1987. Recognizing the interrelationship between pricing, cost recovery, disposition of revenue, and payments to the U.S. Treasury, the Conference Report on COBRA found that "maximizing repayments in the next three years may impair the financial integrity of the program in the longer term" and indicated that any payment schedule must be consistent with the financial integrity of the program, as well as reliability of supplies at competitive prices. In achieving the proper balance, the Report urged DOE "to consider a variety of factors . . ., including the appropriate price and market share, the impact upon existing enrichment facilities and other program expenditures, the impact upon research and development of advanced technologies for additional capacity, and the deficit reduction goals."

III. Unrecovered Government Costs

In the preamble to the proposed criteria, DOE stated there was $3,394 million[3] of prior unrecovered Government costs which should be considered in establishing charges for commercial customers. This amount is based on application of the approach discussed in the preceding section to the categories of costs listed in the existing criteria and the annual financial statements published in connection with the operation of the enrichment program.

A. Costs Listed in the Criteria

The criteria list those categories of costs which DOE considers for recovery. These costs include expenses incurred in providing enrichment services to customers, as follows:

(1) Electric power and all other costs, direct, and indirect, of operating the enrichment plants; (2) depreciation of enrichment plants; (3) costs of process development; (4) costs of DOE administration and other Government support functions; and (5) imputed interest on investment in plant, working capital, the natural uranium contained in those inventories at the DOE enrichment plants needed to provide enrichment services, and the separative work costs of preproduced inventories.

To the extent DOE determines a cost, which falls within one of these categories, is appropriate for recovery, the cost is used in establishing the charges for enrichment services. The unrecovered portion of such a cost is reflected in the annual financial statements as (1) inventory of separative work units (SWU), (2) undepreciated plant and equipment, (3) miscellaneous assets or (4) cumulative loss (or profit). SWU inventories include those costs which were incurred to preproduce enriched material which has not yet been sold. Plant and equipment includes those costs which were incurred to acquire processing facilities to the extent those costs have not been included as depreciation in the annual financial statements. Miscellaneous assets consist primarily of working capital items, along with other enrichment assets. Cumulative loss (or profit) includes all costs which have been expensed to the extent revenue has not (or has) exceeded these costs. Each of these items includes a component for imputed interest.

B. Financial Statement

1. Initial Assets

The first published financial statement included about $1,500 million of unrecovered Government costs. These costs represented the value of the assets which were transferred to the enrichment program at its inception, adjusted to reflect prior cost recognitions and the fact that these assets had originally been acquired for military purposes.

Specifically, the initial unrecovered government costs were:

	Thousands of dollars
Separative work inventories	$313,170
Plant and equipment	1,064,035
Other assets	110,590
Cumulative loss	2,775
Amount to be recovered	$1,490,570

Separative work inventories as of June 30, 1970, amounted to 15,862,000 SWU's. These inventories were produced in anticipation of higher future requirements for enrichment services. The $313 million value of this inventory reflects the cost of producing the inventory. The values established for the opening balances as of June 30, 1970, were based on accumulated costs and revenues since the start of preproduction of separative work in

[3] The preamble contained a figure of $3.457 million based on a preliminary draft of the 1985 financial statement for the enrichment program. The figures in this Notice are slightly different than those which appear in the preamble to the proposed criteria because DOE has refined the numbers which will be set forth in the program's annual financial statement for 1985.

May 1964. Because of the varying judgments that could be used in establishing such values, computations were made using alternative accounting and economic methods in order to test the validity of the amounts established for these accounts. The results of these computations led to the conclusion that the valuation methods selected were appropriate and the amounts as of June 30, 1970, were fairly represented. The inclusion of the costs associated with the inventory was appropriate because the inventory was needed to provide enrichment services after 1970.

The plant and equipment balance of $1,064 million consisted of the undepreciated balance of the three gaseous diffusion plants (GDP). These plants were built to meet military needs at a cost of $2,044 million. The Department established a depreciation policy to expense the GDP costs over the service life of the individual components of each plant on a straight line basis. By the end of FY 1970, $986 million had been depreciated leaving a balance of $1,059 million. Construction work in progress amounted to $5 million.

After extensive discussions and hearings before the Joint Committee on Atomic Energy, it was determined it would not be appropriate to use the full undepreciated value of the GDP in establishing charges for customers after 1970 since considerable excess capacity existed. As a result, the portion of depreciation and interest on plant investment applicable to plants in standby status was not included in establishing customer charges and excess capacity was excluded as long as the percentage of plant used was less than 75 percent of the total capacity. This methodology was commonly referred to as the "Conway formula."

Other assets consisted primarily of working capital items, along with other miscellaneous enrichment assets. The accumulated loss of $3 million reflected the results of enrichment operations through FY 1970. The loss was carried over for recovery in the future.

2. Changes in Plant and Equipment

The costs of plant and equipment are recovered through the inclusion of an appropriate amount of depreciation in the enrichment program's annual financial statements. DOE has consistently used the straight line method of depreciation over established service lives for this purpose. The included depreciation, along with other costs, serves as the basis for establishing customer charges for enrichment services.

As a result of depreciation, the value of the initial plant and equipment has declined for purposes of calculating unrecovered government cost. At the same time, the program has invested in new plant and equipment. This investment initially increased the amount of unrecovered government costs. As with the initial unrecovered plant and equipment costs, this investment becomes less as it is recovered by means of depreciation.

3. Research and Development

The research and development costs used in establishing enrichment charges are limited to those research and development costs directly related to providing future enrichment services. All such costs relating to the diffusion process have been included. Centrifuge related costs were included beginning in FY 1975 when it was determined this research and development program was being conducted exclusively for potential production applications. Costs prior to FY 1975 have been excluded. The centrifuge related costs were eliminated as of June 5, 1986. A similar determination was made to include the advanced isotope separation R&D costs beginning in FY 1978. All Atomic Vapor Laser Isotope Separation ("AVLIS") costs prior to FY 1978 were excluded. Costs relating to the Molecular Laser Isotope Separation and Plasma Separation Process were dropped in FY 1982 when the AVLIS process was selected over the other two for enrichment purposes.

4. Interest

Since the beginning of the program, interest has accrued on unrecovered costs and has been reported in the annual financial statements. Through FY 1985, the imputed interest on these costs reported in the financial statements amounted to about $4,600 million.

Imputing interest is proper since the Federal Government incurs significant interest costs in financing its debt. Since this debt is the basis of the Government's investment in the enrichment program, interest should be imputed on the unrecovered portion of that investment. Through FY 1985, interest was imputed at a rate based on the previous year's average rate for outstanding marketable securities of the U.S. Treasury. Beginning in FY 1986, DOE is proposing to use a fixed rate of 6.319 percent (the average of prior Treasury rates used) to impute interest on existing unrecovered costs.

5. Current Unrecovered Government Costs

The following is a tabulation of unrecovered Government costs.

Unrecovered Government Investment as of September 30, 1985

[Dollars in millions]

Inventories:		
Separative Work	$1,663	
Uranium	404	$2,067
Plant and Equipment:		
Gas Centrifuge Enrichment Plant	2,589	
Gaseous Diffusion Plants	1,979	
Atomic Vapor Laser Isotope Separation	33	
Imputed Interest	171	4,772
Other Balance Sheet Items		49
Cumulative Loss from Operations		295
Subtotal		[1] 7,183
LESS: Loss on Capital Investment:		
Gas Centrifuge Enrichment Plant	2,589	
Gaseous Diffusion Plants	1,200	[1] 3,789
Unrecovered Government Investment		$3,394

[1] These amounts do not include imputed interest after the effective date of recognizing a loss on capital investment. If the imputed interest were included from the effective date to September 30, 1985, imputed interest of $303 million would be added, changing these amounts to $7,484 and $4,092 million, respectively. In either event, the $3,394 million represents the unrecovered Government investment.

In the preamble to the proposed criteria, DOE announced a reduction in the amount of plant and equipment costs to be recovered to reflect the fact these assets are not being used to provide enrichment services to customers. The amount of this reduction is equivalent to 60 percent of the value of the Gaseous Diffusion Plants (GDP) that is no longer an earning asset, and the entire value of the Gas Centrifuge Enrichment Plant (GCEP) which never was and never will be an earning asset. DOE believes this reduction is proper. Customers should pay a price which reflects only the actual costs of providing enrichment services. The costs of items which are not, and most likely will not, be used in providing enrichment services to current customers are not appropriate for recovery. DOE has determined that none of the GCEP and only forty percent of the GDP's are used to provide enrichment services. Accordingly, only the costs associated with the utilized 40 percent of the GDP's are appropriate Government costs to be recovered over a reasonable period of time. As a result of this reduction, the amount of unrecovered government costs appropriate for inclusion in establishing customer charges is $3,394 million.

6. Treatment of Government Transactions

DOE provides a portion of its production to meet U.S. Government requirements for enrichment services. The cost recovery computations have been structured so that the costs of providing enrichment services are allocated to commercial customers and to government users on the same basis.

In the annual financial statements and cost recovery calculations, all costs are recognized. These total costs are offset by revenues. Since unrecovered Government costs result when costs exceed revenues, equitable allocation requires all customers be treated as paying the same price for enrichment services. For commercial customers, revenues are determined from sales invoices. For Government deliveries, revenues are imputed at prices equial to those charge commercial customers. This practice has been consistently followed and reported in the annual financial statements since the beginning of the program. Therefore, the costs of providing enrichment services are allocated proportionally to all customers.[4]

The treatment of Government and commercial revenues in the Federal budget process has varied over the years. However, the treatment of revenues and outlays in the budget process has never been the basis for determining the amount of unrecovered government costs. A review of the treatment of revenues and outlays in the budget process demonstrates the problems with using a budget or cash basis method of determining unrecovered Government costs. All the cash costs of providing enrichment services to commercial and Government users have always been included in the uranium enrichment budget. The treatment of revenues, however, has varied. Prior to FY 1980, commercial revenues were not used in annual Appropriations Act as direct offsets to uranium enrichment budget costs. From FY 1980 through FY 1986 commercial revenues were used as direct offsets to enrichment costs to arrive at a net enrichment appropriation amount. Through FY 1982 there were no Government revenues included in the budget process. A change was made in FY 1983 when revenues were included for Government deliveries for the first time. The revenues were calculated using the commercial price less the depreciation and imputed cost components. These cost components were not included because these non-cash costs are not included in the enrichment budget.

Issued in Washington, D.C., on April 21, 1986.

James W. Vaughan, Jr.,

Acting Assistant Secretary for Nuclear Energy.

[FR Doc. 86-9335 Filed 4-24-86; 8:45 am]

BILLING CODE 6450-01-M

[4] A change was made in FY 1986 which should result in a more precise allocation. Beginning in FY 1986, the cost of high assay enrichment production was separated and separate prices were developed for high and low assay production. The FY 1986 Government revenue includes amounts to reflect the separate high and low assay prices. The high assay price is considerably higher than the low assay price because of the less efficient equipment used in producing high assay material, and the additional safeguard, security, and environmental protection costs associated with higher enrichments. Since the Government is the primary user of high assay production, this change has resulted in increased costs being transferred to the Government users. DOE has not made this high and low assay adjustment retroactively because of the lack of cost data to make a defined cost allocation in prior years, and because the estimated impact of this adjustment is small (only $10 to $15 million per year). This FY 1986 change will be reflected in the FY 1986 financial statements.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 111

Proposed Customs Regulations Amendment Relating to Customs Broker Examinations

AGENCY: Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Customs currently gives an examination to those wishing to become licensed Customs brokers twice per year. The administration of these exams is proving to be a burden on the limited resources of Customs. In order to maintain the high standards of the exam and pass only those capable of rendering valuable information and services to their clients, Customs is proposing to reduce the number of times the exam is given to once per year.

DATE: Comments must be received on or before June 24, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: George Pinto, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2654).

SUPPLEMENTARY INFORMATION:

Background

Part 111, Customs Regulations (19 CFR Part 111), sets forth the general provisions as well as specific procedures relating to Customs brokers, that is, individuals, partnerships, associations, or corporations licensed to transact Customs business on behalf of others. In particular, § 111.13 contains the procedural aspects of the examination of applicants for individual brokers licenses.

Currently, pursuant to § 111.13(b), Customs gives two brokers exams per year, in April and October. The exams are prepared and graded in Customs Headquarters and are designed to test an applicant's knowledge of customs and related laws, regulations, and procedures, and his or her fitness to render valuable service to importers and exporters. Composing exam questions which are unambiguous and which comprehensively test an applicant's knowledge of the subject matter is a difficult and time consuming task. The work entailed in preparing and grading the exam is a serious drain on the limited resources of Customs.

There has been a continual increase in the number of applicants wishing to take the brokers exam each time that it is given. It has reached the point that Customs is concerned that the quality of the exam will suffer if we continue to give it twice yearly. Up to now, a high standard of quality has been maintained on the exam and it is generally recognized as a fair and thorough test of the qualifications of the applicant. It is with the goal of maintaining this high standard that Customs now proposes to amend § 111.13(b), Customs Regulations, to reduce the frequency of exams to once yearly. The proposed schedule provides for an exam every June. If the number of applicants continues to increase while the resources Customs can allocate to preparing and grading the exam fails to keep pace, Customs is concerned this would result in inadequate testing of an applicant's knowledge and consequently the granting of licenses to those who may not qualify to act for others in Customs matters.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs

Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that, if adopted, the proposed amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 111

Administrative practice and procedure, Brokers.

Proposed Amendments

It is proposed to amend Part 111, Customs Regulations (19 CFR Part 111), as set forth below:

PART 111—CUSTOMS BROKERS

1. The authority citation for Part 111 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1624, 1641.

2. It is proposed to amend § 111.13(b) by removing the words, "April and October", and inserting in their place, "June of each year".

William von Raab,
Commissioner of Customs.

Approved April 4, 1986.

Francis A. Keating II,
Assistant Secretary of the Treasury.

[FR Doc. 86-9296 Filed 4-24-86; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 172

Reduction of Petitioning Time in Liquidated Damages Cases

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to expedite the processing of cases in which liquidated damages have been assessed against a bond holder for violations of the Customs laws and regulations. The proposal would reduce the time in which petitions for relief from the payment of the liquidated damages may be filed with Customs in such cases from 60 days to 30 days from the date of mailing of the notice of the liquidated damages incurred. It would thus conform the administrative petitioning time in these cases to that which currently applies to seizure and forfeiture cases.

DATE: Comments must be received on or before June 24, 1986.

ADDRESS: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: James Demb, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202-566-5746).

SUPPLEMENTARY INFORMATION:

Background

Section 172.2, Customs Regulations (19 CFR 172.2), provides procedures Customs uses when a petition for relief is not filed or payment is not made to Customs or arrangements made to pay by a party who is liable for the payment of liquidated damages assessed against a bond holder for violation of any of the conditions of the bond. Under this section, a 60-day period from the mailing date of the notice of liquidated damages incurred is allowed before any collection action is taken by Customs. Collection action may be temporarily withheld, however, if it appears that the party liable for the payment of liquidated damages is absent from the U.S. at the time the notice is received or for more than 30 days during the 60-day petitioning period.

Current § 172.12, Customs regulations (19 CFR 172.12), refers to the 60-day period for filing a petition for relief in liquidated damages cases and current § 172.33, Customs Regulations (19 CFR 172.33), provides for a similar 60-day period for filing supplemental petitions for relief, under certain specified conditions.

Similar 60-day filing periods formerly applied to petitions for relief filed in accord with the provisions of Parts 162 and 171, Customs regulations (19 CFR Parts 162, 171), which are concerned with cases involving the seizure of merchandise subject to forfeiture of fines and penalties incurred for violations of the Customs laws and regulations. Pursuant to T.D. 85-195, published in the **Federal Register** on December 10, 1985 (50 FR 50287), however, this 60-day petitioning period was reduced to 30 days. This was done to conform the Customs Regulations to changes made to the Tariff Act of 1930 (19 U.S.C. 1202 et seq.), with respect to the forfeiture and disposition of property seized by Customs. The petitioning period change was one of many changes to Parts 162 and 171, which resulted from certain provisions of the Comprehensive Crime Control Act of 1984 (Pub. L. 98-473) and the Tariff and Trade Act of 1984 (Pub. L. 98-573). It was expected that these changes would reduce Customs costs relating to the storage and upkeep of seized property and expedite the processing of penalty and forfeiture cases resulting from the seizure of the property.

At the time that the changes to Parts 162 and 171 were proposed, it was determined advisable not to include liquidated damages cases among those subject to the new 30-day petitioning period. It was believed that inasmuch as property is not being held by Customs in liquidated damages cases, the same urgency did not attach to these cases as it does to seizure and forfeiture cases. Since that time, however, it has been decided that liquidated damages cases should nevertheless be subject to a 30-day petitioning period in order to expedite the disposition of these cases, thereby saving Customs needed time and resources. It was also reasoned that having the same petitioning period for seizure, forfeiture, and liquidated damages cases would be easier to administer since it would preclude any confusion as to when the 30-day or the 60-day petitioning period would apply.

It is therefore proposed to amend §§ 172.2(a), 172.12(b), and 172.33 (a)(1) and (c)(2)(ii), Customs Regulations, to reduce the petitioning time in liquidated damages cases from 60 to 30 days. It is also proposed to amend § 172.2(b), to reduce from "more than 30 days" to "more than 20 days," the time during the 30-day petitioning period a party liable for the payment of liquidated damages must be absent from the U.S. in order for collection action on the case to be temporarily withheld by Customs.

It is also proposed to amend the heading and text of § 172.2(a), to provide that Customs will refer unsatisfied liquidated damages claims to the

Department of Justice rather than the U.S. Attorney. This direct referral would expedite the processing of these cases and the collection of liquidated damages.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue NW., Washington, DC 20229.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 172

Administrative practice and procedures, Liquidated damages.

Proposed Amendments

It is proposed to amend Part 172, Customs Regulations (19 CFR Part 172), as set forth below.

PART 172—LIQUIDATED DAMAGES

1. The authority citation for Part 172 would continue to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

2. It is proposed to revise § 172.2 to read as follows:

§ 172.2 Failure to petition for relief.

(a) *Referral of claim to Department of Justice.* If any party liable for liquidated damages fails to petition for relief or to pay or make arrangements to pay the liquidated damages within 30 days from the date of mailing of the notice of the liquidated damages incurred, as provided in § 172.1, or within such additional time as may have been granted, the district director of Customs, after required collection action, shall refer the claim promptly to the Department of Justice.

(b) *Absence from the U.S.* If it appears that the parties liable for liquidated damages are absent from the U.S. or during the 30-day period referred to in paragraph (a) of this section were absent for more than 20 days, the district director may withhold such referral for a reasonable time unless other action is expressly authorized by the Commissioner of Customs.

3. It is proposed to revise § 172.12(b) to read as follows:

§ 172.12 Filing of petition for relief.

* * * * *

(b) *When filed.* A petition for relief shall be filed within 30 days from the date of mailing of the notice of the liability for liquidated damages incurred unless an extension of such period has been granted by the district director.

* * * * *

4. It is proposed to amend § 172.33 by revising paragraphs (a)(1) and (c)(2)(ii) to read as follows:

§ 172.33 Supplemental petitions for relief.

(a) *Time and place of filing.* If the interested parties are not satisfied with a decision of the district director or the Commissioner of Customs, a supplemental petition may be filed with the district director of Customs by the interested parties. Such a petition shall be filed either:

(1) Within 30 days from the date of notice to the petitioner of the decision from which further relief is requested if no effective period is prescribed in the decision; or

* * * * *

(c) * * *

* * * * *

(2) A second supplemental petition will not be considered except in one of the following circumstances:

* * * * *

(ii) If it is filed within 30 days following an administrative or judicial decision which reduces the loss of duties upon which the mitigated penalty amount was based; or

* * * * *

William von Raab,
Commissioner of Customs.

Approved: April 8, 1986.

Francis A. Keating, II,
Assistant Secretary of the Treasury.

[FR Doc. 86-9297 Filed 4-24-86; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Reg. Nos. 4 and 16]

Disability Insurance and Supplemental Security Income; Determinations of Disability—Compliance, Performance Standard Revisions, and Other Changes Involving Administrative Requirements and Procedures

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: These proposed regulations for administering the disability determination function implement section 17 of Pub. L. 98-460 (the "Social Security Disability Benefits Reform Act of 1984") which provides measures to improve State compliance with Federal law by amending section 221 of the Social Security Act (the Act). Section 221 requires the Secretary to take definitive steps within specific time frames to either assure the compliance of State agencies with SSA regulations and other written guidelines or proceed to terminate their participation in the SSA-administered disability programs. The proposed regulations also make other changes to improve the disability determination process by revising State agency performance requirements, modifying our monitoring and technical and management assistance procedures, and by clarifying and updating certain administrative requirements.

DATE: We will consider comments if we receive them no later than June 24, 1986.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or deliver them to the Office of Regulations, Social Security Administration, 3-A-3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on

regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 597–3409.

SUPPLEMENTARY INFORMATION: Prior to the Social Security Disability Amendments of 1980 (Pub. L. 96–265), the disability programs under title II and title XVI of the Social Security Act (the Act) were administered under a Federal-State contractual mechanism established under the 1954 Amendments to the Act. At that time, Congress specified that determinations of disability should be made by State agencies under agreement with the Secretary.

Under these agreements the State agencies, on behalf of the Secretary of Health and Human Services, made determinations of disability on the basis of standards and guides issued by us. We paid 100 percent of the costs incurred by the States in performing this function. The State agency function included obtaining medical and vocational evidence from the applicant and his or her medical treatment sources, and where necessary, arranging for one or more examinations of the applicant by specialists.

The 1980 Amendments to the Social Security Act—Pub. L. 96–265

In 1980, out of concern for uniform program administration, Congress enacted section 304 of the 1980 Amendments which increased our statutory authority to improve State performance by requiring the promulgation of regulations establishing standards of performance and administrative requirements and procedures for the States to follow to ensure effective and uniform administration of the disability programs. Section 304 also provided that beginning June 1981, disability determinations are to be made by the State in compliance with the newly prescribed standards unless it notifies us, in writing, that it no longer wishes to make the determinations. We are authorized to take over the disability determination function if we find that the State has failed to make determinations consistent with prescribed standards. Certain time frames, notice requirements and State agency employee protections were included in these provisions.

Congress was also concerned about the rapid growth of the disability programs that had occurred in the 1970's and the effectiveness of the continuing disability review process. Section 311 of the 1980 Amendments was aimed at improving administration by assuring that only those who meet the definition of disability in the law continue to receive benefits. The provision requires us to review the status of Social Security beneficiaries with nonpermanent disabilities at least once every 3 years, and those with permanent disabilities at less frequent intervals determined appropriate by the Secretary. A number of States expressed concern because our policy did not provide a medical improvement standard for these reviews, and refused to use prescribed standards for review. These States either implemented their own standards or stopped processing continuing disability review cases altogether.

We promulgated performance standards in regulations, effective June 1, 1981, requiring the State agencies which make disability determinations for use to meet standards in accuracy and processing time and other administrative and procedural areas.

The 1984 Amendments to the Social Security Act—Pub. L. 98–460, Section 17

Pub. L. 98–460 was enacted to promote order and uniformity in the disability programs. It maintains our commitment to treat disabled individuals fairly and humanely while fulfilling our obligation to administer the disability programs effectively. In addition to setting our the standards for the continuing disability review cases and providing statutory direction in several other areas, Pub. L. 98–460 included a temporary provision to ensure that we maintain uniform, national administration of the disability programs in the event of a State failing to make disability determinations in a manner consistent with regulations and other written guidelines.

The new statute sets out specific review standards and also requires us to either assure the compliance of States with the regulations and other written guidelines carrying out these standards or to proceed to terminate their participation (fully or partially) in the disability programs. We must follow prescribed steps and make a final determination as to a State's compliance within 16 weeks after information is received that a State may not be in substantial compliance with the regulations and other written guidelines; and assume all or part of a State agency's disability determination function not later than 180 days after a final determination that a State is not in substantial compliance with the regulations and other written guidelines.

The amendments also provide certain protections for State agency employees if a final determination is made by the Commissioner (or his or her designee) finding that a State is not in substantial compliance. We will give employees of the State agency (with some limited exceptions) who are capable of performing duties in the disability determination program preference over any other persons in filling positions for which they are qualified. We may exceed any applicable personnel ceilings and waive any applicable hiring restrictions in this regard. Also, to the extent feasible within the 180 day period after the final determination and in conjunction with the Secretary of Labor, we will assure the statutory protection of State agency employees whom we do not hire.

The amendments also place responsibility on us to assure that cases decided by a State agency when it was not in substantial compliance are decided in accordance with the regulations and other written guidelines.

Section 17 expires on December 31, 1987. Thereafter, it will no longer serve as the statutory basis for the regulatory provisisons which specifically implement it. Unless the provisions of section 17 are extended by Congress, we will prepare new regulations to take effect on January 1, 1988.

Proposed Regulatory Provisions

Definitions

We proposed to add a definition for "not in substantial compliance" (i.e., a State is not following our regulations and other written guidelines in processing disability claims and in carrying out the other responsibilities of the State described in the regulations) to §§ 404.1602 and 416.1002. Also, we have amended the definition of "other written guidelines" to include issuances (e.g., memoranda, program policy statements) by the Commissioner and/or Associate Commissioner for Disability. This expanded definition is intended to cover special situations where time limitations do not permit the promulgation of guidelines through the regular process. Such special issuances are of major importance to the disability program, for example, in carrying out court orders.

The Procedures for Determining When a State Is Not in Substantial Compliance With Our Regulations and Other Written Guidelines

When we receive information that a State may not be following our

regulations and other written guidelines, we will investigate the matter immediately and, within 21 days, make a preliminary finding as to whether the State is or is not in substantial compliance. If a State is notified of a preliminary finding that it is not in substantial compliance, it will have 21 days, from the date of the finding, to provide written assurance that the situation will be corrected.

If a State provides such assurance, we will monitor its performance for 30 days. Regardless of whether a State provides such assurance, we will make a final determination as to whether it is or is not in substantial compliance with our regulations and other written guidelines within 60 days of our preliminary finding (or within 90 days if we conduct a hearing).

Determining if a State Is Not in Substantial Compliance

Section 17 of Pub. L. 98–460 directs us to follow specific procedures within designated time frames before making a final determination that a State is not in substantial compliance with our regulations and other written guidelines. Generally, instances of a State not being in substantial compliance (whether intentional or not) will be readily apparent and correctible. For example: a State may not be applying the correct evaluation criteria to cases involving a certain body system. The situation is investigated, confirmed, and the State notified of the preliminary findings. If the State agrees to correct the deficiency, it is corrected and verified by monitoring, and the State is notified of the final determination of substantial compliance.

We may also find that a State is not in substantial compliance because it has failed to meet our performance standards. Generally, in these situations, the State agency is trying to follow the rules in making disability determinations but does not meet performance standards. Assistance by SSA to the State agency to bring its performance up to acceptable levels is appropriate. Therefore, before initiating the mandatory procedures (see §§ 404.1670(b) and 416.1070(b)) for determining if a State agency is in substantial compliance, we will provide the State agency with performance support. We will provide such support for up to 12 months if a State agency does not meet two of the three established threshold (minimum) performance standard levels (one of which must be the documentation/decision standard, formerly the accuracy standard) for two or more consecutive calendar quarters. Thereafter, we will give the State a 3-month adjustment period when we will not require the State to meet the performance standards.

After the 3-month adjustment period, if the State agency again falls below two of three threshold levels (one being the documentation/decision standard) in two consecutive calendar quarters during the next 12 months, we will begin a 21 day investigation of whether the State is in substantial compliance. Thereafter, we will follow the procedures resulting in a final determination as to whether the State is in substantial compliance.

Hearings

Under Pub. L. 98–460, a State may request a hearing on the matter of substantial compliance and we, at our discretion, may grant it. The State must make its request to the Commissioner of Social Security within 55 days of a preliminary finding that it is not in substantial compliance. If we grant a hearing, we will appoint a hearing officer. The hearing will begin no later than 70 days after the preliminary finding and the State has 3 working days to present evidence and arguments. The hearing officer will recommend a decision to the Commissioner no later than 80 days from the date of the preliminary finding. The recommendation will not be binding; however, it will be considered in reaching the final determination.

Protection of State Agency Employees

If we assume a State agency's disability determination function and we hire, we will give State agency employees (with certain exceptions) who are capable of performing duties in the disability determination function preference over any other persons in filling positions for which they are qualified. We will establish a system for determining the hiring priority among the affected State agency employees in those instances where we are not hiring all of them. State employees converted to Federal employees under this procedure will be new Federal employees subject to the same probationary requirements imposed on all new Federal employees.

Also, to the extent feasible within the 180-day takeover period, we will (in conjunction with the Secretary of Labor) assure the statutory protection of State agency employees not hired by us. In this regard, we will work with the Secretary of Labor to secure assurance from the State that it has made fair and equitable arrangements to protect the interests of displaced employees. Such arrangements include only those provisions which are provided under all applicable Federal, State, and local statutes. These include but are not limited to: (1) The preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (2) the continuation of collective-bargaining rights; (3) the assignment of affected employees to other jobs or to retraining programs; (4) the protection of individual employees against a worsening of their positions with respect to their employment; (5) the protection of health benefits and other fringe benefits; and (6) the provision of severance pay as may be necessary.

Cases Decided by a State Agency After a Final Determination That the State Is Not in Substantial Compliance

After a final determination and before we assume the disability determination function, we will take such action as may be necessary to assure that cases decided by a State agency are decided in accordance with applicable regulations and other written guidelines. We will determine whether the action is necessary in only certain classes of cases or in all cases processed by the State agency during the period.

Performance Standards

Under Pub. L. 96–265, we were required by Congress to promulgate regulations establishing whatever standards of performance were considered necessary for a State agency to follow to ensure effective and uniform administration of the disability programs. Effective and uniform administration must be measured in relationship to the processing of benefit determinations of those people who apply for disability benefits. Accordingly, accuracy of decision and processing time standards were established as the indicators of State agency performance. The objective of a processing time standard is to assure good public service. The objective of a performance standard for accuracy is to assure that decisions are rendered in accordance with regulations and other written guidelines. As in processing time, the purpose is to assure good public service.

Processing time and performance accuracy standards were first established by regulations implementing Pub. L. 96–265 in 1981, and were set at two levels: target and threshold. Only title II and title XVI disability determinations on initial claims were considered in assessing whether a standard was met. In determining

processing time, we considered title II initial processing time and title XVI initial processing time separately, and established separate performance standards. In determining accuracy, we considered title II and title XVI initial disability determinations together and established a single overall standard for performance.

Target levels were established as challenges designed to reflect what we believe to be an optimal level of performance and service delivery that we expect State agencies eventually to attain. We are not proposing to change these target levels from present levels:

Title II initial processing time	37 days
Title XVI initial processing time	43 days
Combined accuracy rate	97 percent

Under current regulations, threshold levels are established as the minimum aceptable levels for performance. Falling below these threshold levels requires appropriate action on our part to improve State agency performance. A State agency's continued failure to meet two of the three threshold levels (one of which is accuracy), after receiving assistance from us to improve performance, could be cause for us to assume partial or complete responsibility for performing the disability determination function, after certain procedural requirements are met.

Intermediate goals are performance goals set between the threshold and target levels for each individual State agency for the purpose of ensuring continued movement toward the targeted level. These intermediate goals are essential tools for the State agencies to improve their performance. We are amending §§ 404.1641(d) and 416.1041(d) to show that the SSA regional commissioners will also monitor specific national minimum intermediate processing time goals of 54.9 days for initial title II cases and 62.4 days for initial title XVI cases by December 31, 1987. This does not preclude the regions from setting lower intermediate precessing time goals; but, it establishes a minimum intermediate goals for the State agencies to reach by December 31, 1987. This will establish reasonable and realistic intermediate processing time goals for State agencies to use to improve performance and focus on the importance of timely service to the public. In the event a State agency fails to meet these intermediate processing time goals, by December 31, 1987, performance will be reviewed jointly by us and the regional office and improvement plans implemented. We will furnish the support needed to improve the State's performance.

Processing Time Standards

The processing of a claim for disability benefits involves actions by both Social Security Administration operating components and the State agencies. The purpose of a processing time standard for the State agencies is to assure that the time required by the State agency to process cases is consistent with our objectives for service delivery and yet allow adequate time for the State agency to secure and evaluate pertinent medical and vocational evidence and make a determination of disability. This process requires the actions of many individuals ranging from routine clerical actions to sophisticated analysis by medical and vocational experts.

In establishing performance standards for processing time, we recognize that our constant effort to improve the program also affects the time required for the State agencies to make determinations. Changes in our evidentiary requirements (for example, in order to keep pace with modern medical and vocational technology) can increase the time required to secure and evaluate evidence. On the other hand, improvements in our procedures and systems enhancements may tend to decrease the time required. However, standards should reflect actual operating experience and changes in current operating realities. Therefore, we are proposing an increase in the processing time thresholds based on recent actual experience and the reasonable predictions of the expected operating environment for the time covered by this regulation.

When we established the current processing time standards, we fully expected that they would require revisions after we acquired some experience in applying them. The original processing time threshold standards were based on data for fiscal year 1979 and were set at 49.5 days for title II initial claims and 57.9 days for title XVI initial claims. Data for the period October 1983 through September 1984 indicate that State agencies' processing times have risen due, in part, to changes in systems, policies, and procedures.

We are now proposing to change the processing time threshold levels for initial title II claims to 59.3 days and the initial title XVI claims to 67.9 days. This increase in time should allow State agencies to better focus on the qualify and consistency of disability determinations, while at the same time, processing disability determinations with reasonable promptness.

In revising the processing time threshold standards, we have decided to continue to apply separate thresholds for title II initial disability determinations and title XVI intital disability determinations because there continues to be a difference in mean processing time between title II and title XVI disability cases. This is explained by the fact that processing times for title II and title XVI case are measured by two different and separate systems. For instances, unlike title II, title XVI State agency processing time can include additional time after the release of the case by the State agency. Specifically, title XVI processing time includes the time between the date of State agency decisional action and the date of updating the Supplemental Security Record. Further improvements in the measurement systems are being made and are expected to enable us to establish a single processing time standard for both types of cases in the future.

We are amending §§ 404.1642 and 416.1042 to establish the new processing time threshold levels.

Documentation/Decision Rate Standard (Formerly Accuracy Rate Standard)

The objective of a performance standard for quality is to assure that decisions are in accordance with regulations and other written guidelines. As in processing time, the purpose is to assure good public service.

As with the processing time threshold standards, when we established the performance accuracy threshold standard in the 1981 regulations, we also anticipated that the accuracy standard would need to be revised in the future after experience in applying it was gained.

Since that time, State agencies have generally improved their accuracy. The original performance accuracy standard was based on combined title II and title XVI initial accuracy data for fiscal year 1979, and the threshold was established at 90.6 percent.

In order to assure continued improved good public service and to emphasize the objective of accurate, well-documented decisions, we are revising the performance accuracy threshold from 90.6 percent on initial cases only to 93.0 percent on all decisions. The increased accuracy threshold and its measurement of all decisions carries out our emphasis on accurate, well-rationalized, and documented cases by providing a realistic challenge for the States that is an incentive for further improved performance. The increased threshold is more representative of

current State agency performance. Since 1979, State agencies have improved their accuracy which is in keeping with our mutual objective of producing quality disability determinations.

We are also proposing to change the term "performance accuracy standard" to "documentation/decision standard". SSA Regional Commissioners and State agency administrators have pointed to the need to clarify that our current accuracy standard cannot be equated solely with the accuracy of the final decision. In this regard we believe that the term "accuracy" may be misleading. What our proposed regulations provide is a much broader standard than decision accuracy in that it also measures the extent to which decisions are fully and consistently documented in accordance with our policy and procedural guidelines. This type of standard offers greater assurance of program uniformity and the correctness of the final decision since it also addresses the soundness and adequacy of the documentation on which the decision is based. The change in name to "documentation/decision standard" reflects this intent.

The national performance accuracy threshold of 93.0 percent was established using fiscal year 1984 State-by-State combined title II and title XVI performance accuracy rates for disability determinations at all levels of adjudication, i.e., initial, reconsideration and continuing disability review cases. However, data were limited on initial continuing disability reviews and reconsiderations of continuing disability reviews because of the April 1984 moratorium on such cases.

On the basis of experience, we have decided to retain a single documentation/decision standard for both title II and title XVI disability cases. There is no data to indicate variances in documentation/decision standards from one type of case to another. We have also decided not to limit the documentation/decision standard to initial cases but rather to revise it to an overall standard that will include reconsideration and continuing disability review cases. This will provide us with a more comprehensive indicator of performance.

If any change in the manner of measurement or revision to the definition of an error is made, we will evaluate the effect of the revision on the documentation/decision threshold.

Technical and Management Assistance

Technical and management assistance (TMA) is a structured SSA program designed to offer or provide support, assistance, guidance or resources to improve State agency performance. This can include but is not limited to: onsite reviews, administrative measures, training or funding. According to the 1981 regulations, a State agency will receive TMA when performance reaches unaccepable levels or when performance has significantly declined. We believe that emphasis should be placed on good performance and preventive maintenance which may be far less costly than corrective action taken when the State agency has developed more serious performance problems. We also believe that the need for additional support or assistance should not be viewed solely as punitive measure brought about by poor performance. We are, therefore, proposing a number of modifications in the monitoring and TMA sections of the regulations. We propose the following changes.

- *TMA*—Change the term "technical and management assistance" to "performance support".
- *Reviews*—Within budgeted resources, conduct fiscal and administrative management reviews (FAMRs) and special onsite reviews as a part of the regular performance monitoring process. A FAMR is a fact finding mission to review particular aspects of State agency operations. During these reviews we also review the quality assurance (QA) functions. The FAMR previously was conducted as a part of technical and management assistance and, as a result, was associated with poor performance.
- *Quality Assurance*—Review the quality assurance (QA) function to ensure that it is consistent with the intent of the QA process and that proper sample selection procedures are being followed.
- *Assistance Request*—Amend §§ 404.1661 and 416.1061 to show that a State may request assistance at any time that the regular monitoring and review process reveals that assistance could enhance performance. The current regulations do not provide that a State may request assistance.
- *Performance Support*—Further amend §§ 404.1661 and 416.1061 to explain that we will consider offering, or providing upon request, assistance when the documentation/decision rate falls below 93.0 percent in any of the three categories of decisions, i.e., initial cases, reconsiderations, and continuing disability reviews. We will consider offering or granting assistance if a State agency falls below one or even two categories of the documentation/decision threshold, e.g., reconsiderations only, even though it is still in "substantial compliance." Performance support directed at a specific problem area may improve a State agency's overall documentation/decision rate. Also, if any of our ongoing reviews and quality assurance activities reveal that performance could be improved by such support, we will consider offering assistance. The current regulations only allow for optional TMA when performance significantly declines or when intermediate goals have not been met. The proposed regulations will allow for performance support, including State requested support, in a much broader range of circumstances. This support will continue to be provided from State and SSA staff and budgets.

We are also proposing some other amendments to these sections to conform with changes in the proposed processing time and documentation/decision standards.

Administrative Requirements and Procedures

General Administrative Requirements

The 1981 regulations provide, under the heading "*Organization*" (§§ 404.1620 and 416.1020), that the State is responsible for providing the organizational structure, sufficient qualified personnel, medical consultants services and a quality assurance function to ensure that disability determinations are made accurately and promptly. Our objective was to regulate only where necessary and to allow the States maximum flexibility to manage the State agencies as long as their performance was acceptable. We, therefore, said that we would impose specific requirements in these areas only in the course of a mandatory technical and management assistance program.

It is still our goal to regulate administrative areas only to the extent necessary to ensure effective stewardship of the disability programs and to continue to give the States maximum flexibility to manage the State agencies. However, experience has shown over the past several years that, in some circumstances, there is a need for specific requirements even though mandatory performance support is not needed. A State may have serious deficiencies in one or more functions currently listed under "*Organization*" or in any of the functions included under "*Administrative Responsibilities and Requirements.*" These deficiencies may not necessarily cause the State agency to fall below the thresholds that require mandatory performance support. For example, a State may take action to discontinue its quality assurance program, or may fail to submit timely

and accurate reports of its administrative functions. Another example is: a State may attempt to contract out functions which our instructions require the State to retain. Even where a clear and serious deficiency may eventually lead to a State agency's requiring mandatory performance support, for example, where a State may adopt a medical review procedure for a class of cases that clearly delays processing the cases and imposes evaluation standards which are inconsistent with our regulations or written guidelines, it is unreasonable to expect that we would always wait unitl the State agency's performance falls through the necessary performance thresholds before initiating corrective measures. We have an obligation to exercise stewardship and to immediately undertake to correct any deficiencies which may cause the State to be found not in substantial compliance with our regulations and other written guidelines.

For the above reasons, we have changed the title of §§ 404.1620 and 416.1020 from "*Organization*" to "*General Administrative Requirements*". We have retained the four administrative functions covered in this section but have deleted the statement that we will impose specific organizational requirements on a State only in the course of a mandatory technical and management assistance program. Instead, we have stated that we will act immediately to remedy any deficiencies in the four administrative functions involved under this section or in the other administrative functions covered individually under "*Administrative Responsibilities and Requirements*", which are sufficiently serious that, if not corrected, may cause the State to be found not in substantial compliance with our regulations and other written guidelines.

Facilities

We are proposing to amend §§ 404.1623(c) and 416.1023(c) to require that access to the premises where the disability determination function is performed includes telephonic access to State agency management. Telephone contacts may be preferable to personal visits in some cases for the purposes of clarifying or verifying State agency activities required by the regulations and other written guidelines. They are quicker and more cost effective.

Fiscal

We propose to revise §§ 404.1626 and 416.1026 to substitute "Office of Management and Budget (OMB) Circular A–87" for "Federal Management Circular 74–4" to reflect a change in the title of this latter circular. We are also making reference to 48 CFR 31.6 of the Federal Acquisition Regulations System and OMB Circular A–87 which define necessary costs for the period after March 31, 1984. We also propose to revise these sections to require that States arrange for their own audits in accordance with the Single Audit Act of 1984, Pub. L. 98–502.

The Single Audit Act of 1984 provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulations. The requirements are established to ensure that audits are made on an organization-wide basis. Since the States are required by the Single Audit Act of 1984 to arrange for audits of their own agencies using Federal guidelines, we will audit State records only if (1) they do not perform their own audits of the State agency under the Single Audit Act of 1984 or (2) they perform a State agency audit but the audit does not meet our program requirements. In the case of an unsatisfactory State audit, we may conduct a supplementary audit or review activity as prescribed by the Single Audit Act of 1984.

Audits

We propose to revise §§ 404.1627 and 416.1027 to reflect that the Department of Health and Human Services' Office of Inspector General will not be the principal agency conducting audits of State agencies. The State agencies are to be audited by the States under the Single Audit Act of 1984.

In addition, we are proposing that the Commissioner be given 90 days from the date of receipt of a State's appeal of an audit determination to issue a decision on that appeal. Experience has shown that 45 days to respond does not allow sufficient time for careful investigation and review of all the issues.

Disputes on Other Matters

We propose to revise §§ 404.1681 and 416.1081 to clarify that the "fiscal issues" to be resolved by the Grant Appeals Board are "monetary disallowances." In accordance with the regulations governing the Grant Appeals Board (45 CFR 16), monetary disallowances are the only type of fiscal recommendation, decision, or dispute which are appealable to the Grant Appeals Board.

Executive Order 12291: These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required. In fact, these regulations only make some modifications to the regulations which implemented section 304 of Pub. L. 96–265 (the "Social Security Disability Amendments of 1980"). When those regulations were published in the Federal Register on May 29, 1981 (46 FR 29190), it was determined that they did not constitute a major rule, as defined in Executive Order 12291.

Regulatory Flexibility Act: We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they only affect States agencies making disability determinations under title II and title XVI of the Act. Prior to June 1981, these same State agencies made these disability determinations under agreements with the Secretary.

Paperwork Reduction Act: These regulations impose no new reporting/recordkeeping requirements necessitating OMB clearance.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, survivors and disability insurance.

20 CFR part 416

Administrative practice and procedure, Alcoholism, Drug abuse, Investigations, Medicaid, Reporting and recordkeeping requirements, Supplemental security income (SSI), Vocational rehabilitation.

(Catalog of Federal Domestic Program Nos. 13.802, Social Security Disability Insurance: 13.807 Supplemental Security Income)

Dated: October 4, 1985.

Martha A. McSteen,

Acting Commissoner of Social Security.

Approved: January 9, 1986.

Otis R. Bowen, M.D.,

Secretary of Health and Human Service.

Chapter III, Title 20 of the Code of Federal Regulations is amended as shown.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950——)

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart Q continues to read as follows:

Authority: Secs. 205, 221 and 1102, Social Security Act, as amended: 53 Stat. 1368, as amended, 66 Stat. 1081, as amended; 49 Stat. 647, as amended; 42 U.S.C. 405, 421, and 1302.

2. Section 404.1601 is amended by revising paragraphs (d), (f), and (g) to read as follows:

§ 404.1601 Purpose and scope.

* * * * *

(d) Sections 404.1640 through 404.1650 describe the documentation/decision standard and processing time standards for measuring State agency performance.

* * * * *

(f) Sections 404.1670 and 404.1671 describe the level of performance below which we will find a State agency to be not in substantial compliance with the requirement that it make disability determinations consistent with the regulations and other written guidelines. The action that we will take when this occurs is also set out.

(g) Sections 404.1680 through 404.1683 describe the rules for resolving disputes concerning fiscal issues and providing hearings when we propose to find that a State is not in substantial compliance.

* * * * *

3. In § 404.1602, the definition of "other written guidelines" is revised and definitions for the terms "documentation/decision rates" and "not in substantial compliance" are added to read as follows:

§ 404.1602 Definitions.

* * * * *

"Documentation/decision rates" are the preestablished levels against which State agency disability determination accuracy is measured.

"Not in substantial compliance" means that a State is not following our regulations and other written guidelines in processing disability claims and in carrying out the other responsibilities of the State described in the regulations.

"Other written guidelines" means written issuances (e.g., memoranda, program policy statements) by the Commissioner of Social Security or the Associate Commissioner for Disability; and the policies, procedures, guides, and operating instructions in the Disability Insurance sections of the Program Operations Manual System that are not designated as advisory or discretionary.

4. Section 404.1620 is amended by revising the section heading and paragraph (a) to read as follows:

§ 404.1620 General administrative requirements.

(a) The State will provide the organizational structure, qualified personnel, medical consultant services, and a quality assurance function sufficient to ensure that disability determinations are made accurately and promptly We may impose specific administrative requirements in these areas and in those under "Administrative Responsibilities and Requirements" in order to establish uniform, national administrative practices or to correct the areas of deficiencies which may later cause the State to be "not in substantial compliance" with our regulations and other written guidelines.

* * * * *

5. Section 404.1623 is amended by revising paragraph (c) to read as follows:

§ 404.1623 Facilities.

* * * * *

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed and personal and/or telephonic access to the management of such premises. These contacts shall be for the purpose of verifying and/or inspecting the work and activities required by the regulations and assuring compliance with pertinent Federal statutes and regulations. We will contact the State and give reasonable prior notice of the times and purposes of any visits.

6. Section 404.1626 is amended by revising paragraphs (a) and (e) to read as follows:

§ 404.1626 Fiscal.

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs are direct as well as indirect costs as defined in 41 CFR 1–15.7 of the Federal Procurement Regulations System and in Office of Management and Budget (OMB) Circular A–87, as amended or superseded for costs incurred before April 1, 1984; and 48 CFR 31.6 of the Federal Acquisition Regulations System and OMB Circular A–87 as amended or superseded for costs incurred after March 31, 1984.

* * * * *

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its expenditires. Based on an audit arranged by the State under Pub. L. 98–502, the Single Audit Act of 1984, or by the HHS Inspector General or based on an audit or review by SSA (see § 404.1627), we will determine whether the expenditures were consistent with cost principles described in 41 CFR 1–15.7 for costs incurred before April 1, 1984; and 48 CFR Subpart 31.6 of the Federal Acquisition Regulations for costs incurred after March 31, 1984; and in other written guidelines in effect at the time the expenditures were made or incurred.

* * * * *

7. Section 404.1627 is revised to read as follows:

§ 404.1627 Audits.

(a) *Performed by the State.*—(1) *Generally.* Audits of accounts and records pertaining to the administration of the disability program under the Act, will be performed by States in accordance with the Single Audit Act of 1984 (Pub. L. 98–502) which establishes audit requirements for States receiving Federal assistance. If the State's audit meets SSA's program requirements, SAA will accept the findings and recommendations of the audit. The State will make every effort to act upon and resolve any items questioned in the audit.

(2) *Questioned items.* Items questioned as a result of an audit under the Single Audit Act of 1984 of a cross-cutting nature will be resolved by the Department of Health and Human Services, Office of Procurement, Assistance and Logistics (OPAL). A cross cutting issue is one that involves more than one Federal awarding agency. Questioned items affecting the disability program will be resolved by SSA in accord with paragraph (b)(2) of this section.

(3) *State appeal of audit determinations.* OPAL will notify the State of its determination on questioned items. If the State disagrees with that determination, it may appeal in writing within 30 days of receiving the determination. State appeals of a cross-cutting issue as a result of an audit under the Single Audit Act of 1984 will be made to the Department of Health and Human Services (HHS), Departmental Grant Appeal Board (the Board). The rules for hearings and appeals are provided in 45 CFR Part 16.

(b) *Performed by the Secretary.*—(1) *Generally.* If the State does not perform an audit under the Single Audit Act of 1984 or the audit performed is not satisfactory for disability program purposes, the books of account and records in the State pertaining to the administration of the disability program under the Act will be audited by the HHS Inspector General or audited or reviewed by SSA as appropriate. These audits or reviews will be conducted to determine whether the expenditures were made for the intended purposes and in amounts necessary for the proper and efficient administration of the disability program. Audits or reviews will also be made to inspect the work and activities required by the

regulations to ensure compliance with pertinent Federal statutes and regulations. The State will make every effort to act upon and resolve any items questioned in an audit or review.

(2) *Questioned items.* Expenditures of State agencies will be audited or reviewed, as appropriate, on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any items questioned. They will be given reasonable time to explain items questioned. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made on the audit or review report.

(3) *State appeal of audit determinations.* The appropriate SSA regional commissioner will notify the State of his or her determination on the audit or review report. If the State disagrees with that determination, the State may request reconsideration in writing within 30 days of the date of the regional commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Disability, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of the decision in writing no later than 90 days from the date SSA receives the State's appeal. The decision by the Commissioner or other than monetary disallowances will be final and binding upon the State. The decision by the Commissioner on monetary disallowances will be final and binding upon the State unless the State appeals the decision in writing to the Department of Health and Human Services, Department Grant Appeals Board within 30 days after receiving the Commissioner's decision. See § 404.1683.

8. Section 404.1640 is revised to read as follows:

§ 404.1640 General.

The following sections provide the procedures and guidelines we use to determine whether the State agency is substantially complying with regulations and other written guidelines, including meeting established national performance standards. We use these performance standards to help assure effective and uniform administration of our disability programs and to measure whether each State agency's performance of the disability determination function is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process and ensure that benefits are made available to all eligible persons accurately and efficiently. We measure the State agency performance in two areas—processing time and quality of documentation and decisions on claims. State agency compliance is also judged by adherence to other program requirements, e.g., availability of specialized medical resources and consultative examination oversight activities.

9. Section 404.1641 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 404.1641 Standards of performance.

* * * * *

(b) *The target level.* The target level is the optimum level of performance. There are three targets—one for the combined title II and title XVI overall documentation/decision rate (as defined in § 404.1643(a)), one for title II initial processing time, and one for title XVI initial processing time.

(c) *The threshold level.* The threshold level is the minimum acceptable level of performance. There are three thresholds one for the combined title II and title XVI overall documentation/decision rate, one for title II initial processing time, and one for title XVI initial processing time.

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established and monitored by SSA's regional commissioners after negotiation with each State agency. The intermediate goals are stepping stones designed to help the State agencies reach the target levels. In the case of processing time intermediate goals, minimum levels of performance have been established that each State agency should meet by December 31, 1987.

10. Section 404.1642 is amended by revising the section heading and paragraphs (a) and (c) and by adding a new paragraph (d) to read as follows:

§ 404.1642 Processing time.

(a) *General.* Title II processing time refers to the average number of days (including Saturday, Sunday and holidays) it takes a State agency to process an initial disability claim from the day it is received in the State agency until the day it is released by the State agency. Title XVI processing time refers to the average number of days (including Saturday, Sunday and holidays) from receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or a disability determination, or release of the case folder to the disability quality branch, whichever is the earliest action.

* * * * *

(c) *Threshold levels.* The processing time threshold levels are:

(1) 59.3 days for title II initial claims.

(2) 67.9 days for title XVI initial claims.

(d) *Intermediate Goals.* In order to stress the need for continued improvement, minimum intermediate goals are being established for the calendar year ending December 31, 1987, for title II and title XVI initial case processing time. All states should be achieving by December 31, 1987, minimum intermediate processing time goals of:

(1) 54.9 days for title II initial claims.

(2) 62.4 days for title XVI initial claims.

11. Section 404.1643 is revised to read as follows:

§ 404.1643 Documentation/decision rate.

(a) *General.* Documentation/decision rate refers to the overall percentage of initial, reconsideration, and continuing disability review cases that do not have to be returned to State agencies for further development or correction of decisions based on evidence in the files and as such represents the reliability of State agency adjudication. This definition includes the consideration of factors with potential for affecting a decision even if they do not change the result in a particular case. For example, if a particular item of medical evidence should have been in the file but was not included, even though its inclusion does not change the result in the case, that is treated as an error for purposes of applying the standard.

(b) *Target level.* The State agency overall documentation/decision target level for combined title II and title XVI cases is 97 percent.

(c) *Intermediate goals.* Intermediate goals will be established annually by SSA's regional commissioners after negotiation with the States and should be sued as stepping stones to progress towards the targeted level.

(d) *Threshold level.* The State agency overall documentation/decision threshold level for combined title II and title XVI cases is 93.0 percent.

12. Section 404.1644 is amended by revising the section heading and paragraph (a) to read as follows:

§ 404.1644 How and when we determine whether the processing times are met.

(a) How we determine processing times. For all initial title II cases, we

calculate the mean number of days (including Saturday, Sunday and holidays) from the time the case folder is received in the State agency until it is released to us by the State agency. For initial title XVI cases, we calcuate the mean number of days (including Saturday, Sunday and holidays) from receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or of a disability determination, or release of the case folder to the disability quality branch, whichever is the earliest action.

* * * * *

13. Section 404.1645 is revised to read as follows:

§ 404.1645 How and when we determine whether the documentation/decision rate is met.

(a) *How we determine the documentation/decision rate.* We determine a State agency's documentation/decision rate on the basis of decision and documentation errors identified in our review of sample cases under our quality review program.

(b) *Frequency of review.* Title II and title XVI initial, reconsideration, and continuing disability quality review data are monitored together on a quarterly basis. The determination as to whether the documentation/decision threshold has been met is made at the end of each quarter. Quarterly State-by-State combined overall quality review rates are compared to the established documentation/decision standard (threshold level).

14. Section 404.1650 is revised to read as follows:

§ 404.1650 Action we will take if a State agency does not meet the standards.

If a State agency does not meet two of the three established threshold levels (one of which must be the documentation/decision standard) for two or more consecutive calendar quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification, we will provide the State agency appropriate performance support described in §§ 404.1660, 404.1661 and 404.1662 for a period of up to 12 months.

15. The subheading preceding § 404.1660 is revised from "*Technical and Management Assistance*" to "*Performance Monitoring and Support.*"

16. Section 404.1660 is revised to read as follows:

§ 404.1660 How we will monitor.

We will regularly analyze State agency combined title II and title XVI overall documentation/decision rate, title II initial processing time, and title XVI initial processing time. Within budget resources, we will also routinely conduct fiscal and administrative management reviews (FAMRs) and special onsite reviews. A FAMR is a fact finding mission to review particular aspects of State agency operations. During these reviews we will also review the quality assurance (QA) function. This regular monitoring and review program will allow us to determine the progress each State is making and the type and extent of performance support we will provide to help the State progress toward threshold, intermediate, and/or target levels.

17. Section 404.1661 is revised to read as follows:

§ 404.1661 When we will provide performance support.

(a) *Optional support.* We may offer, or a State may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance or if the documentation/decision rate falls below 93.0 percent in any of the three categories of decisions (i.e., initial, reconsideration and continuing disability review decisions). The State does not have to be below the overall documentation/decision rate of 93.0 percent to receive performance support. Support will be offered, or granted upon request, based on available resources. If the State fails to meet the minimum intermediate processing time goals (see § 404.1642(d)) by December 31, 1987, we will furnish the support needed to improve the State's performance.

(b) *Mandatory support.* (1) We will provide a State agency with mandatory performance support if regular monitoring and review reveal that two of three threshold levels (one of which must be the documentation/decision standard) are not met for two consecutive calendar quarters.

(2) We may also decide to provide a State agency with mandatory performance support if regular monitoring and review reveal that any one of the three threshold levels is not met for two consecutive calendar quarters. Support will be provided based on available resources.

(3) The threshold levels are:

(i) Combined title II and title XVI overall documentation/decision rate—93.0 percent,

(ii) Title II initial processing time—59.3 days, and

(iii) Title XVI initial processing time—67.9 days.

18. New §§ 404.1662 and 404.1663 are added to read as follows:

§ 404.1662 What support we will provide.

Performance support may include any or all of the following:

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(c) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(d) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

§ 404.1663 Failure to meet the performance standards.

After we provide mandatory performance support, we will give the State agency a 3-month adjustment period. During this 3-month period, we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of three threshold levels (one being the documentation/decision threshold) in two consecutive calender quarters during the next 12 months, we will begin the 21-day investigation of whether the State is not in substantial compliance with our regulations and other written guidelines (see § 404.1670(b)(1)).

19. The subheading preceding § 404.1670 is revised from "*Substantial Failure*" to "*When a State is not in Substantial Compliance.*"

20. Section 404.1670 is revised to read as follows:

§ 404.1670 Determining that a State is not in substantial compliance.

(a) *General.* We must assure the substantial compliance of States with our regulations and other written guidelines or assume their disability determination functions within a specified time. Our regulations and other written guidelines take precedence over conflicting State laws and regulations. We may find that a State is not in substantial compliance if it does not meet performance standards (see paragraph (b) of this section) or does not follow other provisions of our regulations and other written guidelines, without good cause (See § 404.1671).

(b) *Procedures.* We take specific steps within definite time frames before determining that a State is not in substantial compliance with our

regulations and other written guidelines. These are:

(1) *Information that a State may not be in substantial compliance.* Where we receive information (e.g., from individuals, quality assurance reviews, etc.) that a State may not be following our regulations and other written guidelines, the matter will be investigated, as soon as possible, by SSA's regional office in whose jurisdiction the State is located to determine if the State is not in substantial compliance (see § 404.1671 if good cause is an issue). Examples of "not in substantial compliance" include:

(i) Failure to follow SSA's disability development and evaluation criteria,

(ii) Failure to process a certain class or classes of disability cases,

(iii) Failure to carry out the basic responsibilities of the State as described in § 404.1603(c), and

(iv) Failure to meet performance standards as described in § 404.1663. In cases involving continued failure to meet the performance standards, the mandated investigation will begin as soon as our information shows that the State has again failed to meet performance standards as described in § 404.1663.

(2) *Preliminary finding.* The SSA regional office will complete its investigation and we will make a preliminary finding on the matter within 21 days of receipt of the information. On the date that such finding is made, we will also notify the State in writing of the outcome. If there is a preliminary finding that the State is not in substantial compliance with our regulations and other written guidelines, the notice will include an explanation of the basis for the finding, i.e., which regulation or guideline is not being complied with and how we determined it. We will request assurance from the State's Governor or equivalent (or his or her designee) that the situation will be corrected.

(3) *Assurance by the State.* Any State notified of a preliminary finding that it is not in substantial compliance will have 21 days, from the date the finding was made, to provide assurance to us in writing that the situation will be corrected.

(4) *Monitoring and final determination.* If a State provides such assurance, we will monitor the agency's performance for 30 days beginning with the day after the date on which the assurance has been provided. Within 60 days after the date on which the preliminary finding was made or 90 days after such date if the State is granted a hearing (see § 404.1680), the Commissioner (or his or her designee) will make a written final determination as to whether the State is substantially complying with our regulations and other written guidelines. This determination is not subject to judicial review.

(5) *Final determination that a State is not in substantial compliance and assumption of workload.* If we make a final determination that any State is not in substantial compliance with our regulations and other written guidelines, we will as soon as possible, but not later than 180 days after the date of such determination, assume responsibility for making disability determinations in that State. We will decide whether to assume all or part of the State's workload (e.g., the part in which the State is not in substantial compliance).

21. Section 404.1671 is revised to read as follows:

§ 404.1671 Good cause for not following our regulations and other written guidelines.

If a State has good cause for not following our regulations and other written guidelines, then we will not find that the State is not in substantial compliance. We will determine if good cause exists. Some of the factors relevant to good cause are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned to the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function;

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulation, or written guidelines, systems modification or systems malfunctions, or rapid, unpredictable caseload growth for a 6-month period or longer.

§ 404.1675 [Removed and Reserved]

22. Section 404.1675 is removed and reserved.

23. Section 404.1680 is revised to read as follows:

§ 404.1680 Discretionary hearings.

(a) *Request for hearing.* Within 55 days of a preliminary finding that a State is not in substantial compliance with regulations or other written guidelines, the State may request a hearing on the issue of substantial compliance. The request must be directed to the Commissioner of Social Security. The request may be oral but it must be confirmed in writing within 5 days. Written requests must be sent to the Commissioner of Social Security, Social Security Administration, P.O. Box 888, Baltimore, MD 21235.

(b) *Action on hearing request.* Within 60 days of the preliminary finding, we will notify the State as to whether or not such a request will be granted. If a hearing is granted, the notice will specify the time and the place of the hearing. Such hearing will be scheduled to begin no later than the 70th day after the date of the preliminary finding. The notice will also specify the regulations or other written guidelines with respect to which the State may not be in substantial compliance.

(c) *Conduct of hearing.* The hearing will be conducted by a hearing officer whom we designate. The State will have a maximum of 3 working days to present evidence and argument. The hearing officer's rulings with respect to evidence, persons who may attend the hearing, and other matters about the conduct of the hearing will not be appealable. The hearing officer will recommend a decision to us no later than 80 days after the date of the preliminary finding.

(d) *Final determination.* Within 90 days of the date of the preliminary finding, the Commissioner will make a written final determination as to whether the State is substantially complying with our regulations and other written guidelines. This determination is not subject to judicial review (see § 404.1670(b)(4)).

24. Section 404.1681 is revised to read as follows:

§ 404.1681 Disputes on other matters.

Disputes concerning monetary disallowances will be resolved in proceedings before the Health and Human Services Departmental Grant Appeals Board if the issue cannot be resolved between us and the State. Disputes other than monetary disallowances will be resolved through an appeal to the Commissioner of Social Security, who will make the final decision. (See § 404.1627)

25. Section 404.1690 is revised to read as follows:

§ 404.1690 Assumption of the disability determination function when we make a finding that a State is not in substantial compliance.

(a) *Notice to State.* When we find that a State is not in substantial compliance, we will notify the State in writing that we will assume responsibility for performing the disability determination function from the State agency, whether

the assumption will be partial or complete, and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of any partial or complete assumption of the disability determination function from a State agency may not be later than 180 days after the final determination finding that a State is not in substantial compliance.

(c) *Protection of State employees.* If we hire personnel to perform the disability determination functions assumed from the State, we will give employees of the State agency who are capable of performing duties in the disability determination program preference over any other persons in filling positions for which they are qualified. We may, but are not required to, extend this hiring preference to the State agency's administrator or the deputy or assistant administrator (or his or her equivalent). We may exceed any applicable personnel ceilings and waive any applicable hiring restrictions in this regard. Also, to the extent feasible within the 180 day period after the date of the final determination and in conjunction with the Secretary of Labor, we will assure the statutory protections under applicable Federal, State, and local law of State agency employees whom we do not hire.

26. Section 404.1691 is amended by revising paragraph (b) and adding new paragraphs (c) and (d).

§ 404.1691 Assumption when a State no longer wishes to perform the disability determination function.

* * * * *

(b) *Effective date of assumption.* The State agency will continue to perform whatever activities of the disability determination function it is performing at thetime the notice referred to in paragraph (a) of this section is given for not less than 180 days, or, if later, until we have complied with the requirements of paragraphs (c) and (d) of this section. For example, if the State is not making disability determinations (because we previously assumed responsibility for making them) but is performing other activities related to the disability determination function at the time it gives notice, the State will continue to perform these activities until the requirements of this paragraph are met. Thereafter, we will assume complete responsibility for performing the disability determination function.

(c) *Protection of State employees.* We will develop and initiate procedures to implement a plan to partially or completely assume the disability determination function from the State agency under paragraph (a) and (b) of this section. Except for the State agency's administrator, deputy administrator, or assistant administrator (or his or her equivalent), we will give employees of the State agency who are capable of performing duties in the disability determination function preference over any other persons in filling positions with us for which they are qualified. We may also give a preference in hiring the State agency's administrator, deputy administrator, or assistant administrator (or his or her equivalent). We will establish a system for determining the hiring priority among the affected State agency employees in those instances where we are not hiring all of them.

(d) *Determination by Secretary of Labor.* We will not assume responsibility for performing the disability determination function from a State until the Secretary of Labor determines that the State has made fair and equitable arrangements under applicable Federal, State and local law to protect the interests of employees who will be displaced from their employment because of the assumption and who we will not hire.

§ 404.1692 [Removed and Reserved]

27. Section 404.1692 is removed and reserved.

28. New §§ 404.1695 and 404.1696 are added to read as follows:

§ 404.1695 Cases decided by a State agency when the State is not in substantial compliance.

After a final determination that a State is not in substantial compliance and before we assume the disability determination funciton, we will take such action as may be necessary to assure that cases decided by the State agency are decided in accordance with applicable regulations and other written guidelines. We will determine whether the action is necessary in only certain classes of cases or in all of the cases processed by the State agency during the period.

§ 404.1696 Expiration date.

Section 17 of Pub. L. 98–460 will expire on December 31, 1987. Thereafter, it will no longer serve as the statutory basis for the regulatory provisions which specifically implement it.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart J continues to read as follows:

Authority: Secs 1102, 1614 and 1631 Social Security Act, as amended; 49 Stat. 647, as amended, 86 Stat. 1471, as amended by 86 Stat. 52; 86 Stat. 1475; U.S.C. 1302, 1382c, and 1383.

2. Section 416.1001 is amended by revising paragraphs (d), (f), and (g) to read as follows:

§ 416.1001 Purpose and scope.

* * * * *

(d) Section 416.1040 through 416.1050 describe the documentation/decision standard and processing time standards for measuring State agency performance.

* * * * *

(f) Sections 416.1070 and 416.1071 describe the level of performance below which we will find a State agency to be not in substantial compliance with the requirement that it make disability determinations consistent with the regulations and other written guidelines. The action that we will take when this occurs is also set out.

(g) Sections 416.1080 through 416.1083 describe the rules for resolving disputes concerning fiscal issues and providing hearings when we proposed to find that a State is not is substantial compliance.

* * * * *

3. In § 416.1002, the definition of "other written guidelines" is revised and definitions for the terms "documentation/decision rates" and "not is substantial compliance" are added to read as follows:

§ 416.1002 Definitions

* * * * *

"Documentation/decision rates" are the preestablished levels against which State agency disability determination accuracy is measured.

"Not in substantial compliance" means that a State is not following our regulations and other written guidelines in processing disability claims and in carrying out the other reponsibilities of the State described in the regulations.

"Other written guidelines" means written issuances (e.g., memoranda, program policy statements) by the Commissioner of Social Security or the Associate Commissioner for Disability; and the policies, procedures, guides, and operating instructions in the Disability Insurance sections of the Program Operations Manual System that are not designated as advisory or discretionary.

4. Section 416.1020 is amended by revising the section heading and paragraph (a) to read as follows:

§ 416.1020 General administrative requirements.

(a) The State will provide the organizational structure, qualified personnel, medical consultant services, and a quality assurance function sufficient to ensure that disability determinations are made accurately and promptly. We may impose specific administrative requirements in these areas and in those under "Administrative Responsibilities and Requirements" in order to establish uniform, national administrative practices or to correct the areas of deficiencies which may later cause the State to be "not in substantial compliance" with our regulations and other written guidelines.

* * * * *

5. Section 416.1023 is amended by revising paragraph (c) to read as follows:

§ 416.1023 Facilities.

* * * * *

(c) *Access.* The State will permit us access to the premises where the disability determination function is performed and personal and/or telephonic access to the management of such premises. These contacts shall be for the purpose of verifying and/or inspecting the work and activities required by the regulations and assuring compliance with pertinent Federal statutes and regulations. We will contact the State and give reasonable prior notice of the times and purposes of any visits.

6. Section 415.1026 is amended by revising paragraphs (a) and (e) to read as follows:

§ 416.1026 Fiscal.

(a) We will give the State funds, in advance or by way of reimbursement, for necessary costs in making disability determinations under these regulations. Necessary costs are direct as well as indirect costs as defined in 41 CFR 1–15.7 of the Federal Procurement Regulations System and in Office of Management and Budget Circular A–87, as amended or superseded for costs incurred before April 1, 1984; and 48 CFR 31.6 of the Federal Acquisition Regulations System and OMB Circular A–87 as amended or superseded for costs incurred after March 31, 1984.

* * * * *

(e) After the close of a period for which funds have been made available to the State, the State will submit a report of its expenditures. Based on an audit arranged by the State under Pub. L. 98–502, the Single Audit Act of 1984, or by the HHS Inspector General or based on an audit or review by SSA (see § 416.1027), we will determine whether the expenditures were consistent with cost principles described in 41 CFR 1–15.7 for costs incurred before April 1, 1984; and 48 CFR Subpart 31.6 of the Federal Acquisition Regulations for costs incurred after March 31, 1984; and in other written guidelines in effect at the time the expenditures were made or incurred.

* * * * *

7. Section 416.1027 is revised to read as follows:

§ 416.1027 Audits.

(a) *Performed by the State.*—(1) *Generally.* Audits of account and records pertaining to the administration of the disability program under the Act, will be performed by States in accordance with the Single Audit Act of 1984 (Pub. L. 98–502) which establishes audit requirements for States receiving Federal assistance. If the State's audit meets SSA's program requirements, SSA will accept the findings and recommendations of the audit. The State will make every effort to act upon and resolve any items questioned in the audit.

(2) *Questioned items.* Items questioned as a result of an audit under the Single Audit Act of 1984 of a cross-cutting nature will be resolved by the Department of Health and Human Services, Office of Procurement, Assistance and Logistics (OPAL). A cross cutting issue is one that involves more than one Federal awarding agency. Questioned items affecting the disability program will be resolved by SSA in accord with paragraph (b)(2) of this section.

(3) *State appeal of audit determinations.* OPAL will notify the State of its determination on questioned items. If the State disagrees with that determination, it may appeal in writing within 30 days of receiving the determination. State appeals of cross-cutting issue as a result an audit under the Single Audit Act of 1984 will be made to the Department of Health and Human Services (HHS), Departmental Grant Appeals Board (the Board). The rules for hearings and appeals are provided in 45 CFR Part 16.

(b) *Performed by the Secretary.*—(1) *Generally.* If the State does not perform an audit under the Single Audit Act of 1984 or the audit performed is not satisfactory for disability program purposes, the books of account and records in the State pertaining to the administration of the disability program under the Act will be audited by the HHS Inspector General or audited or reviewed by SSA as appropriate. These audits or reviews will be conducted to determine whether the expenditures were made for the intended purposes and in amounts necessary for the proper and efficient administration of the disability program. Audit or reviews will also be made to inspect the work and activities required by the regulations to ensure compliance with pertinent Federal statutes and regulations. The State will make every effort to act upon and resolve any items questioned in an audit or review.

(2) *Questioned items.* Expenditures of State agencies will be audited or reviewed, as appropriate, on the basis of cost principles and written guidelines in effect at the time the expenditures were made or incurred. Both the State and the State agency will be informed and given a full explanation of any items questioned. They will be given reasonable time to explain items questioned. Any explanation furnished by the State or State agency will be given full consideration before a final determination is made in the audit or review report.

(3) *State appeal of audit determinations.* The appropriate SSA regional commissioner will notify the State of his or her determination on the audit or review report. If the State disagrees with that determination, the State may request reconsideration in writing within 30 days of the date of the regional commissioner's notice of the determination. The written request may be made, through the Associate Commissioner, Office of Disability, to the Commissioner of Social Security, Room 900, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The Commissioner will make a determination and notify the State of the decision in writing no later than 90 day from the SSA receives the State's appeal. The decision by the Commissioner on other than monetary disallowances will be final and binding upon the State. The decision by the Commissioner on monetary disallowances will be final and binding upon the State unless the State appeals the decision in writing to the Department of Health and Human Services, Departmental Grant Appeals Board within 30 days after receiving the Commissioner's decision. See § 416.1083.

8. Section 416.1040 is revised to read as follows:

§ 416.1040 General.

The following sections provide the procedures and guidelines we use to determine whether the State agency is substantially complying with regulations and other written guidelines, including

meeting established national performance standards. We use these performance standards to help assure effective and uniform administration of our disability program and to measure whether each State agency's performance of the disability determination function is acceptable. Also, the standards are designed to improve overall State agency performance in the disability determination process and ensure that benefits are made available to all eligible persons accurately and efficiently. We measure the State agency performance in two areas—processing time and quality of documentation and decisions on claims. State agency compliance is also judged by adherence to other program requirements, e.g., availability of specialized medical resources and consultative examination oversight activities.

9. Section 416.1041 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 416.1041 Standards of performance.

* * * * *

(b) *The target level.* The target level is the optimum level of performance. There are three targets—one for the combined title II and title XVI overall documentation/decision rate (as defined in § 416.1043(a)), one for title II initial processing time, and one for title XVI initial processing time.

(c) *The threshold level.* The threshold level is the minimum acceptable level of performance. There are three thresholds—one for the combined title II and title XVI overall documentation/decision rate, one for title II initial processing time, and one for title XVI initial processing time.

(d) *Intermediate goals.* Intermediate goals are levels of performance between the threshold levels and the target levels established and monitored by SSA's regional commissioners after negotiation with each State agency. The intermediate goals are stepping stones designed to help the State agencies reach the target levels. In the case of processing time intermediate goals minimum levels of performance have been established that each State agency should meet by December 31, 1987.

10. Section 416.1042 is amended by revsing the section heading and paragraphs (a) and (c) and by adding a new paragraph (d) to read as follows:

§ 416.1042 Processing time.

(a) *General.* Title II processing time refers to the average number of days (including Saturday, Sunday, and holidays) it takes a State agency to process an initial disability claim from the day it is received in the State agency until the day it is released by the State agency. Title XVI processing time refers to the average number of days (including Saturday, Sunday, and holidays) from receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or of a disability determination, or release of the case folder to the disability quality branch, whichever is the earliest action.

* * * * *

(c) *Threshold levels.* The processing time threshold levels are:

(1) 59.3 days for title II initial claims.

(2) 67.9 days for title XVI initial claims.

(d) *Intermediate goals.* In order to stress the need for continued improvement, minimum intermediate goals are being established for the calendar year ending December 31, 1987, for title II and title XVI initial case processing times. All States should be achieving by December 31, 1987, minimum intermediate processing time goals of:

(1) 54.9 days for title II initial claims.

(2) 62.4 days for title XVI initial claims.

11. Section 416.1043 is revised to read as follows:

§ 416.1043 Documentation/decision rate.

(a) *General.* Documentation/decision rate refers to the overall percentage of initial, reconsideration, and continuing disability review cases that do not have to be returned to State agencies for further development or correction of decisions based on evidence in the files and as such represents the reliability of State agency adjudication. This definition includes the consideration of factors with potential for affecting a decision even if they do not change the result in a particular case. For example, if a particular item of medical evidence should have been in the file but was not included, even though its inclusion does not change the result in the case, that is treated as an error for purposes of applying the standard.

(b) *Target level.* The State agency overall documentation/decision target level for combined title II and title XVI cases is 97 percent.

(c) *Intermediate goals.* Intermediate goals will be established annually by SSA's regional commissioners after negotiation with the States and should be used as stepping stones to progress toward the targeted level.

(d) *Threshold level.* The State agency overall documentation/decision threshold level for combined title II and title XVI cases is 93.0 percent.

12. Section 416.1044 is amended by revising the section heading and paragraph (a) to read as follows:

§ 416.1044 How and when we determine whether the processing times are met.

(a) *How we determine processing times.* For all initial title II cases, we calculate the mean number of days (including Saturday, Sunday, and holidays) from the time the case folder is received in the State agency until it is released to us by the State agency. For initial title XVI Cases, we calculate the mean number of days (including Saturday, Sunday, and holidays) from receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or of a disability determination, or release of the case folder to the disability quality branch, whichever is the earliest action.

* * * * *

13. Section 416.1045 is revised to read as follows:

§ 416.1045 How and when we determine whether the documentation/decision rate is met.

(a) *How we determine the documentation/decision rate.* We determine a State agency's documentation/decision rate on the basis of decision and documentation errors identified in our review of sample cases under our quality review program.

(b) *Frequency of review.* Title II and title XVI initial, reconsideration, and continuing disability quality review data are monitored together on a quarterly basis. The determination as to whether the documentation/decision threshold has been met is made at the end of each quarter. Quarterly State-by-State combined overall quality review rates are compared to the established documentation/decision standard (threshold level).

14. Section 416.1050 is revised to read as follows:

§ 416.1050 Action we will take if a State Agency does not meet the standards.

If a State agency does not meet two of the three established threshold levels (one of which must be the documentation/decision standard) for two or more consecutive calendar quarters, we will notify the State agency in writing that it is not meeting the standards. Following our notification, we will provide the State agency appropriate performance support described in §§ 416.1060, 416.1061 and 416.1062 for a period of up to 12 months.

15. The subheading preceding § 461.1060 is revised from "*Technical and Management Assistance*" to

"*Performance Monitoriing and Support.*"

16. Section 416.1060 is revised to read as follows:

§ 416.1060 How we will monitor.

We will regularly analyze State agency combined title II and title XVI overall documentation/decision rate, title II initial processing time, and title XVI initial processing time. Within budgeted resources, we will also routinely conduct fiscal and administrative management reviews (FAMRs) and special onsite reviews. A FAMR is a fact finding mission to review particular aspects of State agency operations. During these reviews we will also review the quality assurance (QA) function. This regular monitoring and review program will allows us to determine the progress each state is making and the type and extent of performance support we will provide to help the state progress toward threshold, intermediate, and/or target levels.

17. Section 416.1061 is revised to read as follows:

§ 416.1061 When we will provide performance support.

(a) *Optional support.* We may offer, or a State may request, performance support at any time that the regular monitoring and review process reveals that support could enhance performance or if the documentation/decision rate falls below 93.0 percent in any of the three categories of decisions (i.e, initial, reconsideration, and continuing disability review decisions). The State does not have to be below the overall documentation/decision rate of 93.0 percent to receive performance support. Support will be offered, or granted upon request, based on available resources. If the State fails to meet the minimum intermediate processing time goals (see §§ 416.1042(d)) by December 31, 1987, we will furnish the support needed to improve the State's performance.

(b) *Mandatory support.* (1) We will provide a State agency with performance support if regular monitoring and review reveal that two of three threshold levels (one of which must be the documentation/decision standard) are not met for two consecutive calendar quarters.

(2) We may also decide to provide a State agency with mandatory performance support if regular monitoring and review reveal that any one of the three threshold levels is not met for two consecutive calendar quarters. Support will be provided based on available resources.

(3) The threshold levels are:

(i) Combined title II and title XVI overall documentation/decision rate—93.0 percent,

(ii) Title II initial processing time—59.3 days, and

(iii) Title XVI initial processing time—67.9 days.

18. New §§ 416.1062 and 416.1063 are added to read as follows:

§ 416.1062 What support we will provide.

Performance support may include any or all of the following:

(a) An onsite review of cases processed by the State agency emphasizing adherence to written guidelines.

(b) A request that necessary administrative measures be implemented (e.g., filling staffing vacancies, using overtime, assisting with training activities, etc.).

(c) Provisions for Federal personnel to perform onsite reviews, conduct training, or perform other functions needed to improve performance.

(d) Provisions for fiscal aid to allow for overtime, temporary hiring of additional staff, etc., above the authorized budget.

§ 416.1063 Failure to meet the performance standards.

After we provide mandatory preformance support, we will give the State agency a 3-month adjustment period. During this 3-month period, we will not require the State agency to meet the threshold levels. Following the adjustment period, if the State agency again falls below two of three threshold levels (one being the documentation/decision threshold) in two consecutive calendar quarters during the next 12 months, we will begin the 21-day investigation of whether the State is not in substantial compliance with our regulations and other written guidelines (see § 416.1070(b)(1)).

19. The subheading preceding § 416.1070 is revised from "*Substantial Failure*" to "*When a State is not in Substantial Compliance.*"

20. Section 416.1070 is revised to read as follows:

§ 416.1070 Determining that a State is not in substantial compliance.

(a) *General.* We must assure the substantial compliance of States with our regulations and other written guidelines or assure their disability determination functions within a specified time. Our regulations and other written guidelines take precedence over conflicting State laws and regulations. We may find that a State is not in substantial compliance if it does not meet performance standards (see paragraph (b) of this section) or does not follow other provisions of our regulations and other written guidelines, without good cause (See § 416.1071).

(b) *Procedures.* We take specific steps within definite time frames before determining that a State is not in substantial compliance with our regulations and other written guidelines. These are:

(1) *Information that a State may not be in substantial compliance.* Where we receive information (e.g., from individuals, quality assurance reviews, etc.) that a State may not be following our regulations and other written guidelines, the matter will be investigated, as soon as possible, by SSA's regional office in whose jurisdiction the State is located to determine if the State is not in substantial compliance (see § 416.1071 if good cause is an issue). Examples of "not is substantial compliance" include:

(i) Failure to follow SSA's disability development and evaluation criteria,

(ii) Failure to process a certain class or classes of disability cases,

(iii) Failure to carry out the basic responsibilities of the State as described in § 416.1003(c), and

(iv) Failure to meet performance standards as described in § 416.1063. In cases involving continued failure to meet the performance standards, the mandated investigation will begin as soon as our information shows that the State has again failed to meet performance standards as described in § 416.1063.

(2) *Preliminary finding.* The SSA regional office will complete its investigation and we will make a preliminary finding on the matter within 21 days of receipt of the information. On the date that such finding is made, we will also notify the State in writing of the outcome. If there is a preliminary finding that the State is not in substanmtial compliance with our regulations and other written guidelines, the notice will include an explanation of the basis for the finding, i.e., which regulation or guideline is not being complied with and how we determined it. We will request assurance from the State's Governor or equivalent (or his or her designee) that the situation will be corrected.

(3) *Assurance by the State.* Any State notified of a preliminary finding that it is not in substantial compliance will have 21 days, from the date the finding was made, to provide assurance to us in writing that the situation will be corrected.

(4) *Monitoring and final determination.* If a State provides such

assurance, we will monitor the agency's performance for 30 days beginning with the day after the date on which the assurance has been provided. Within 60 days after the date on which the preliminary finding was made or 90 days after such date if the State is granted a hearing (see § 416.1080), the Commissioner (or his or her designee) will make a written final determination as to whether the State is substantially complying with our regulations and other written guidelines. This determination is not subject to judicial review.

(5) *Final determination that a State is not in substantial compliance and assumption of workload.* If we make a final determination that any State is not in substantial compliance with our regulations and other written guidelines, we will as soon as possible, but not later than 180 days after the date of such determination, assume responsibility for making disability determinations in that State. We will decide whether to assume all or part of the State's workload (e.g., the part in which the State is not in substantial compliance).

21. Section 416.1071 is revised to read as follows:

§ 416.1071 Good cause for not following our regulations and other written guidelines.

If a State has good cause for not following our regulations and other written guidelines, then we will not find that the State is not in substantial compliance. We will determine if good cause exists. Some of the factors relevant to good cause are:

(a) Disasters such as fire, flood, or civil disorder, that—

(1) Require the diversion of significant personnel normally assigned to the disability determination function, or

(2) Destroyed or delayed access to significant records needed to make accurate disability determinations;

(b) Strikes of State agency staff or other government or private personnel necessary to the performance of the disability determination function;

(c) Sudden and unanticipated workload changes which result from changes in Federal law, regulations, or written guidelines, systems modification or systems malfunctions, or rapid unpredictable caseload growth for a 6-month period or longer.

22. Section 416.1075 is removed and reserved.

§ 416.1075 [Removed and Reserved]

23. Section 416.1080 is revised to read as follows:

§ 416.1080 Discretionary hearings.

(a) *Request for hearing.* Within 55 days of a preliminary finding that a State is not in substantial compliance with regulations or other written guidelines, the State may request a hearing on the issue of substantial compliance. The request must be directed to the Commissioner of Social Security. The request may be oral but it must be confirmed in writing within 5 days. Written requests must be sent to the Commissioner of Social Security, Social Security Administration, P.O. Box 888, Baltimore, MD 21235.

(b) *Action on hearing request.* Within 60 days of the preliminary finding, we will notify the State as to whether or not such a request will be granted. If a hearing is granted, the notice will specify the time and the place of the hearing. Such hearing will be scheduled to begin no later than the 70th day after the date of the preliminary finding. The notice will also specify the regulations or other written guidelines with respect to which the State may not be in substantial compliance.

(c) *Conduct of hearing.* The hearing will be conducted by a hearing officer whom we designate. The State will have a maximum of 3 working days to present evidence and argument. The hearing officer's ruling with respect to evidence, persons who may attend the hearing, and other matters about the conduct of the hearing will not be appealable. The hearing officer will recommend a decision to us no later than 80 days after the date of the preliminary finding.

(d) *Final determination.* Within 90 days of the date of the preliminary finding, the Commissioner will make a written final determination as to whether the State is substantially complying with our regulations and other written guidelines. This determination is not subject to judicial review (see § 416.1070(b)(4)).

24. Section 416.1081 is revised to read as follows:

§ 416.1081 Disputes on other matters.

Disputes concerning monetary disallowances will be resolved in proceedings before the Health and Human Services Departmental Grant Appeals Board if the issue cannot be resolved between us and the State. Disputes other than monetary disallowances will be resolved through an appeal to the Commissioner of Social Security, who will make the final decision. (See § 416.1027)

25. Section 416.1090 is revised to read as follows:

§ 416.1090 Assumption of the disability determination function when we make a finding that a State is not in substantial compliance.

(a) *Notice to State.* When we find that a State is not in substantial compliance, we will notify the State in writing that we will assume responsibility for performing the disability determination function from the State agency, whether the assumption will be partial or complete, and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of any partial or complete assumption of the disability determination function from a State agency may not be later than 180 days after the final determination finding that a State is not in substantial compliance.

(c) *Protection of State employees.* If we hire personnel to perform the disability determination functions assumed from the State, we will give employees of the State agency who are capable of performing duties in the disability determination program preference over any other persons in filling positions for which they are qualified. We may, but are not required to, extend this hiring preference to the State agency's administrator or the deputy or assistant administrator (or his or her equivalent). We may exceed any applicable personnel ceilings and waive any applicable hiring restrictions in this regard. Also, to the extent feasible within the 180-day period after the date of the final determination and in conjunction with the Secretary of Labor, we will assure the statutory protections under applicable Federal, State, and local law of State agency employees whom we do not hire.

26. Section 416, 1091 is amended by revising paragraph (b) and adding new paragraphs (c) and (d).

§ 416.1091 Assumption when a State no longer wishes to perform the disability determination function.

* * * * *

(b) *Effective date of assumption.* The State agency will continue to perform whatever activities of the disability determination function it is performing at the time the notice referred to in paragraph (a) of this section is given for not less than 180 days or, if later, until we have complied with the requirements of paragraphs (c) and (d) of this section. For example, if the State is not making disability determinations (because we previously assumed responsibility for making them) but is performing other activities related to the disability determination function at the time it gives notice, the State will continue to

perform these activities until the requirements of this paragraph are met. Thereafter, we will assume complete responsibility for performing the disability determination function.

(c) *Protection of State employees.* We will develop and initiate procedures to implement a plan to partially or completely assume the disability determination function from the State agency under paragraphs (a) and (b) of this section. Except for the State agency's administrator, deputy administrator, or assistant administrator (or his or her equivalent), we will give employees of the State agency who are capable of performing duties in the disability determination function preference over any other persons in filling position with us for which they are qualified. We may also give a preference in hiring the State agency's administrator, deputy administrator, or assistant administrator (or his or her equivalent). We will establish a system for determining the hiring priority among the affected State agency employees in those instances where we are not hiring all of them.

(d) *Determination by Secretary of Labor.* We will not assume responsibility for performing the disability determination function from a State until the Secretary of Labor determines that the State has made fair and equitable arrangements under applicable Federal, State and local law to protect the interests of employees who will be displaced from their employment because of the assumption and who we will not hire.

§ 416.1092 [Removed and Reserved]

28. New §§ 416.1095 and 416.1096 are added to read as follows:

§ 416.1095 Cases decided by a State agency when the State is not in substantial compliance.

After a final determination that a State is not in substantial compliance and before we assume the disability determination function, we will take such action as may be necessary to assure that cases decided by the State agency are decided in accordance with applicable regulations and other written guidelines. We will determine whether the action is necessary in only certain classes of cases or in all of the cases processed by the State agency during the period.

§ 416.1096 Expiration date.

Section 17 of Pub. L. 98–460 will expire on December 31, 1987. Thereafter, it will no longer serve as the statutory basis for the regulatory provisions which specifically implement it.

[FR Doc. 86–9230 Filed 4–24–86; 8:45 am]
BILLING CODE 4190–11–M

Food and Drug Administration

21 CFR Ch. I

[Docket Nos. 75P–0250, 76N–0094, 76P–0329, 76P–0330, 76N–0336, 85N–0347, 85P–0348, 85N–0349, 85N–0350, 85N–0351, 85N–0352, 85N–0353, 85N–0354, 85N–0355, 85N–0362, and 85N–0497]

Withdrawal of Certain Proposed Rules and Food Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Withdrawal of proposals.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing several proposed rules that it published in the **Federal Register** before 1977 that relate to various food products. The agency's decision to withdraw these proposals is based on its limited resources to complete these rulemaking proceedings and on the likelihood that they have become outdated in the time that has elapsed since the publication of these proposed rules.

DATE: Comments by June 24, 1986.

ADDRESS: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Louis B. Brock, Center for Food Safety and Applied Nutrition (HFF–302), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0162.

SUPPLEMENTARY INFORMATION: FDA is announcing the withdrawal of several proposed rules that relate to various food products. The agency's decision to withdraw these proposals is based on its limited resources to complete these rulemaking proceedings and on the likelihood that these proposals have become outdated in the time that has elapsed since their publication.

Because of the agency's limited resources and changing priorities, FDA has been unable to consider, in a timely fashion, the issues raised by the comments on these proposals. It is unlikely that the agency will have an opportunity to consider these issues in the foreseeable future. All of the proposed rules that are being withdrawn were published in the **Federal Register** before 1977. Because of the time that has passed since the proposals were issued, as well as changes that may have occurred in the conditions that bear on these proposals, the agency believes that it would be inappropriate to proceed further with any action on these proposals without the benefit of updated public comments.

The withdrawal of a proposed rule neither means that FDA has necessarily lost interest in the issues addressed by the proposal nor precludes the agency from reinstituting proceedings to promulgate a rule concerning those issues. Should the agency decide to undertake such a rulemaking, it will repropose the action and provide opportunity for comment. Moreover, many of these proposals were issued in response to citizen petitions. The agency's current action would not preclude interested persons from filing new petitions on any of the issues covered by the proposed rules the FDA is withdrawing.

For the reasons set out above, and under the Federal Food, Drug, and Cosmetic Act (secs. 201, 402, 403, 701, 52 Stat. 1040–1042 as amended, 1046–1048 as amended, 1055–1056 as amended (21 U.S.C. 321, 342, 343, 371)), the agency is withdrawing the following proposed rules, published in the **Federal Register** on the dates indicated:

Title	Docket No.	FR publication date and cite
Whipped cream; whipped table cream	85N–0347	Oct. 2, 1959 (24 FR 7964).
Change in status of GRAS or prior-sanctioned substances; proposed statement of policy	85N–0362	Sept. 28, 1971 (36 FR 19089).
Uniform method of declaring the percentage of an ingredient in foods	85N–0350	June 14, 1974 (39 FR 20885).
Nutrition labeling; serving and portion sizes and daily consumption amounts	85N–0349	June 14, 1974 (39 FR 20887).
General flours and related products; improvement of nutrient levels of enriched farina	85N–0497	June 14, 1974 (39 FR 20891).
Breakfast beverage products	85N–0351	June 14, 1974 (39 FR 20895).
Fortified hot breakfast cereals	85N–0353	June 14, 1974 (39 FR 20896).
Fortified ready-to-eat breakfast cereals	85N–0352	June 14, 1974 (39 FR 20898).
Formulated meal replacements	85N–0355	June 14, 1974 (39 FR 20905).
Main dish products	85N–0354	June 14, 1974 (39 FR 20906).
Carbonated soft drink beverages; serving and portion sizes	85P–0348	Jan. 29, 1975 (40 FR 4315).
Fruit flavored sweetened spreads	75P–0250	Nov. 11, 1975 (40 FR 52616).
Substitute for margarine (oleomargarine) or butter	76N–0336	Aug. 30, 1976 (41 FR 36509).

Title	Docket No.	FR publication date and cite
Infant and junior foods	76P-0330	Sept. 7, 1976 (41 FR 37593).
Infant foods, percentage declaration of ingredients	76P-0329	Sept. 7, 1976 (41 FR 37595).
Raw breaded shrimp	76N-0094	Oct. 22, 1976 (41 FR 46606).

Interested persons may, on or before June 24, 1986, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and with the docket number of the invididual proposed rule being withdrawn if the comment relates to a specific proposal. FDA will consider any comments received. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 16, 1986.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 86-9268 Filed 4-24-86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 553

Application of Fair Labor Standards Act to Employees of State and Local Governments; General

Correction

In FR Doc. 86-8685 beginning on page 13402 in the issue of Friday, April 18, 1986, make the following corrections:

1. On page 13403, in the second column, in the seventh line from the bottom, add "of" after "employees".

2. On page 13404, in the first column, in paragraph (4), in the fourth line, "hours" should read "hour".

§ 553.11 [Corrected]

3. On page 13405, in the third column, in § 553.11(b), the last sentence should read: "The term typically does not include individuals who are directly supervised by someone other than the elected official even though they may have been selected by the official. For example, the term might include the elected official's personal secretary, but would not include the secretary to an assistant."

§ 553.23 [Corrected]

4. § 553.23, on page 13407, in the second column, in paragraph (c)(2), in the next to the last line, "(a)(1)" should read "(c)(1)".

§ 553.31 [Corrected]

5. In § 553.31, on page 13410, in the first column, in paragraph (c), in the fourth line, "requires" should read "required"; in paragraph (d), in the sixth line, "required" should read "requires".

BILLING CODE 1505-01-M

29 CFR Part 553

Application of the Fair Labor Standards Act to Employees of State and Local Governments; Volunteers

Correction

In FR Doc. 86-8686 beginning on page 13411 in the issue of Friday, April 18, 1986, make the following corrections:

1. On page 13411, in the third column, in the fourth complete paragraph, in the fifth line, "section 3(e)(4)(ii)" should read "section 3(e)(4)(A)(ii)".

§ 553.105 [Corrected]

2. On page 13413, in the second column, in § 553.105, in the first line, "to" should read "or".

BILLING CODE 1505-01-M

29 CFR Part 553

Application of the Fair Labor Standards Act to Employees of State and Local Governments; Fire Protection and Law Enforcement Employees of Public Agencies

Correction

In FR Doc. 86-8687 beginning on page 13413 in the issue of Friday, April 18, 1986, make the following corrections:

§ 553.200 Statutory provisions: section 13(b)(20).

1. On page 13416, in the second column, the heading of § 553.200 is corrected to read as set forth above.

§ 553.210 [Corrected]

2. On the same page, in the third column, in § 553.210(a), in the tenth line, "legal the" should read "the legal".

§ 553.213 [Corrected]

3. On page 13418, in the second column, in § 553.213(a), in the third line, "engaged" should read "engage".

§ 553.220 [Corrected]

4. On page 13419, in the first column, in § 553.220(a), in the sixth line, add the word "on" after "to be".

§ 553.226 [Corrected]

5. On page 13420, in the second column, in § 553.226(c), in the first line, "as" should read "at".

§ 553.230 [Corrected]

6. On page 13421, in the first column, in § 553.230(b), in the eighth line, "exceed" should read "exceeds".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Opportunity for Public Hearing on Proposed Amendment to the Arkansas Permanent Regulatory Program; Correction

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a proposed rule announcing procedures for requesting a public hearing that appeared in the **Federal Register** on Tuesday, April 15, 1986 (51 FR 12713). The action is necessary to correct the scheduled date a hearing is to be held, if necessary, to May 7, 1986, at the same time and location as previously announced.

FOR FURTHER INFORMATION CONTACT: Mr. James Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 333 West 4th Street, Room 3014, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927.

Dated: April 22, 1986.

Arthur W. Abbs,

Acting Assistant Director, Program Operations.

[FR Doc. 86-9275 Filed 4-24-86; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 86-15]

Filing of Tariffs by Marine Terminal Operators; Exculpatory Provisions

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes to amend its rules governing the filing of terminal tariffs by marine terminal operators to prohibit certain tariff provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold harmless terminal operators from liability for their own negligence. Comments and suggestions are also requested on the formulation of a limited exception to this general prohibition which would apply where the user of the port facility assumes certain risks to obtain rate concessions or the terminal operator relinquishes certain operational control to the user.

DATE: Comments due on or before June 24, 1986.

ADDRESS: Comments (original and 20 copies) to: John Robert Ewers, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert G. Drew, Director, Bureau of Tariffs, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5795.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: Over the past decade the Commission has considered a number of tariff provisions in marine terminal tariffs that relieve the port or terminal operator of certain liabilities which might otherwise be the responsibility of the port or terminal operator. These provisions have consistently been found to be unjust and unreasonable practices, and therefore, unlawful under section 17 of the Shipping Act, 1916 (1916 Act), 46 U.S.C. app. 816. The mandate of the 1916 Act that ports must establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing or delivering of property is also contained in the Shipping Act of 1984 (1984 Act), 46 U.S.C. app. 1701-1720, at section 19(d)(1), 46 U.S.C. app. 1709(d)(1).

The Commission first determined that an exculpatory clause was invalid under section 17 of the 1916 Act in *Truck and Lighter Loading and Unloading Practices at New York Harbor*, 9 F.M.C. 505 (1966). The clause at issue there provided:

> The Terminal Operator assumes no responsibility for delays to motor vehicles and no claims for such delays will be honored.

The Commission held that it was neither just nor reasonable for the New York Terminal Conference to disclaim responsibility for delay caused by the terminals, although terminal operators could disclaim liability for causes of delay beyond their control.

A more comprehensive exculpatory provision was subsequently found unlawful in *I. Charles Lucidi* v. *The Stockton Port District*, 22 F.M.C. 19 (1979). Stockton's tariff provided:

> The Port of Stockton shall not be responsible for any injury to freight on or in its facilities, by fire, leakage, evaporation, natural shrinkage, waterage, decay, animals, rats, mice, other rodents, moths, weevils, other insects, weather conditions, sweat moisture, the elements, or discharge of water from breakdown of plant, machinery, other equipment, collapse of building or structure, insurrection, war, or shortage of labor; for delay, loss or damage arising from riots, strikes, labor or other disturbances of any persons or of any character beyond the control of the Port of Stockton.

The *Stockton* decision generally followed the rule of law established in *Truck and Lighter* with respect to a port tariff provision that would exculpate a port from liability for damages caused by the fault, in whole or in part, of the port. The Commission followed this principle in finding port tariff exculpatory provisions invalid in *United States Lines* v. *Maryland Port Administration*, 20 S.R.R. 646 (1980).

The Commission has also determined to be unlawful provisions that require port facility users to hold-harmless or indemnify the port authority from liability for the port's *own* negligence. An "indemnity" provision was found unlawful on this basis in *West Gulf Maritime Association* v. *The City of Galveston*, 22 F.M.C. 101 (1979). The Commission stated there that:

> Although the port's indemnification requirement in the instant proceeding would not apply if the port were wholly responsible for an occurrence, it would apply in situations in which the port were partially responsible, even if more so than the user. We find that the indemnity requirements and the waiver of claims and subrogation provisions of the port's tariff are unreasonable for precisely the reasons enunciated in *Bisso, Truck and Lighter*, and *Lucidi*.

More recently, in *Central National Corporation* v. *Port of Houston Authority*, 22 S.R.R. 795 (1984), the Commission struck down both a general exculpatory provision and an indemnity provision, the latter reading as follows:

> Users of its facilities agree to indemnify and save harmless the port authority from and against all losses, claims, demands and suits for damages . . . including court costs and attorney's fees, incident to or resulting from their operation on the property of the port authority.

The Commission has taken similar action in the past year in situations where port authorities have attempted to impose exculpatory tariff provisions on port users. *Wilmington Stevedores, Inc.* v. *the Port of Wilmington, Del.*, 23 S.R.R. 409 (1985); *Stevens Shipping and Terminal Co.* v. *South Carolina State Port Authority*, 23 S.R.R. 684 (1985); *Southeastern Marine Company* v. *Georgia Ports Authority*, _____ S.R.R. _____ (1986).

All the above-cited Commission decisions stand for a clear principle of law that the Commission proposes to codify in its terminal tariff regulations, 46 CFR Part 515. Tariff provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that would impose upon others the obligation to indemnify or save harmless the terminals from liability for their own negligence, are, as a rule, unjust and unreasonable and, therefore, contrary to the provisions of section 17 of the Shipping Act, 1916 and section 10(d)(1) of the Shipping Act of 1984.

While the rule actually being proposed in this proceeding absolutely prohibits exculpatory or hold-harmless provisions in marine terminal tariffs, the Commission is also soliciting comments on a possible limited exception to that rule. Such an exception might apply where users of terminal facilities, in consideration for rate and operational concessions by the terminal operator, agree to assume the risks inherent in certain terminal operations. That conditions at a port might justify a hold-harmless and indemnification provision in a terminal tariff under such circumstances was suggested by the Initial Decision in *Lucidi*, where it was stated:

> To the extent that the provisions of [Stockton's tariff] would relieve the port from [liability for damage] to property caused in whole or in part by the fault of the port and without a *quid pro quo* of any kind, such provisions are unjust and unreasonable, in violation of section 17 of the Act.
>
> 22 F.M.C. at 29.

The form of a possible exception to the general prohibition against exculpatory and hold-harmless provisions might be as follows:

Terminal tariffs may contain hold-harmless and indemnification provisions for specific risks and hazards in terminal operations that port facility users have agreed to assume from the terminal operator but only if such provisions plainly indicate that such assumption by the users is in consideration for the terminal operator's specific concomitant concessions in rates or relinquishment of control to the user over the operations for which the user is assuming liability or providing indemnification.

The Commission therefore requests comments on this or a similar exception. Commenters are asked to address whether any exception is proper as a matter of law, advisable as a matter of policy and administratively feasible. Where appropriate, comments to the proposed rule or rule exception should include suggested implementing language.

The Commission has determined that this proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical region; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete in domestic or export markets.

The Chairman of the Federal Maritime Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units or small governmental organizations.

The Paperwork Reduction Act, 44 U.S.C. 3501–3520, does not apply to this Notice of Proposed Rulemaking because the proposed amendments to Part 515 of Title 46, Code of Federal Regulations, do not impose any additional reporting or recordkeeping requirements or collection of information from members of the public which require the approval of the Office of Management and Budget.

PART 515—[AMENDED]

Therefore, for the reasons set forth above, Part 515 of Title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation to Part 515 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 816, 820, 841a, 1709, 1714 and 1716.

2. A new § 515.7, entitled "Exculpatory Tariff Provisions," is added to read as follows:

§ 515.7 Exculpatory tariff provisions.

No terminal tariff shall contain provisions that exculpate or otherwise relieve marine terminal operators from liability for their own negligence, or that impose upon others the obligation to indemnify or hold-harmless the terminals from liability for their own negligence.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86-9249 Filed 4-24-86; 8:45 am]

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Notices

Federal Register
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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 86-052]

Availablity of Environmental Assessment and Finding of No Significant Impact for the Licensing of a Recombinant Derived Pseudorabies Virus Vaccine

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document provides notice that an environment assessment and finding of no significant impact has been prepared by the Animal and Plant Health Inspection Service concerning the issuance of a veterinary biological product license issued to TechAmerica Group Inc., for a recombinant derived pseudorabies virus vaccine. The assessment indicates that the licensing of the recombinant derived pseudorabies virus vaccine will not cause any significant impact on the environment. Based upon this finding of no significant impact the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at the Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Copies of the environmental assessment are also available upon request at this same address.

FOR FURTHER INFORMATION CONTACT: David Espeseth, Senior Staff Veterinarian, Veterinary Biologics Staff, Veterinary Services, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 829, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service (APHIS) has prepared an environmental assessment and finding of no significant impact relative to its licensing of a recombinant derived pseudorabies virus vaccine under the Virus-Serum-Toxin Act (VSTA) 21 U.S.C. 151 et seq.) produced by TechAmerica Group, Inc.

The environmental assessment and finding of no significant impact provides the public with documentation of USDA's review and analysis of environmental concerns.

Under the VSTA, before a veterinary biological product can be licensed it must be shown to be pure, safe, potent, and efficacious. In the course of reviewing safety data for the recombinant derived pseudorabies virus vaccine APHIS assessed the impact of the licensure of the product on the environment, as set forth in the environmental assessment.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genetic engineering procedures were employed to delete a gene which is essential for virus replication making the recombinant derived virus used in the vaccine much safer than naturally occurring or conventional modified vaccine virus.

2. The recombinant derived vaccine virus was rendered essentially avirulent using conventional methodology.

4. Use of vaccine virus can help to control the shed and spread of the virulent field strains of the virus from health animals.

5. Data established that the genetically engineered gene deletion was a stable characteristic of the vaccine virus with an extremely low probability of reversion.

6. The recombinant derived vaccine virus has been shown to have a reduced virulence for other animal species.

7. The recombinant derived strain of the virus is not considered oncogenic or pathogenic to man.

Based on the foregoing, APHIS has determined that licensure of the recombinant derived pseudorabies virus vaccine would have no significant environmental impact on the human environment.

The environmental assessment and finding of no significant impact has been prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 et seq.); (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (Title 40, Code of Federal Regulations (CFR) Parts 1500-1508); (3) USDA regulations implementing NEPA (7 CFR Part 1b); and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384 and 44 FR 51272-51274).

Done at Washington, DC., this 22nd day of April, 1986.

Billy G. Johnson,

Acting Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service.

[FR Doc. 86-9303 Filed 4-22-86; 3:03 pm]

BILLING CODE 3410-34-M

COMMISSION ON CIVIL RIGHTS

Alabama Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m. on May 21, 1986, at the Birmingham Hyatt Hotel, Governor's Room, 901 21st Street, North, Birmingham, Alabama. The purpose of the meeting is to followup on the briefing memorandum on minority participation in the electoral process for county commissions and city councils.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Rodney Max or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). Hearing impaired persons who will atttend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC., April 21, 1986.
Ann E. Goods,
Program Specialist for Regional Programs.
[FR Doc. 86-9258 Filed 4-24-86; 8:45 am]
BILLING CODE 6335-01-M

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on May 9, 1986, at U.S. Commission on Civil Rights, Room 3280, 230 S. Dearborn, Chicago, Illinois. The purpose of the meeting is to plan for a public forum on the rights of the hearing impaired.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Hugh Schwartzberg or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will atttend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1986.
Ann E. Goode,
Program Specialist for Regional Programs.
[FR Doc. 86-9259 Filed 4-24-86; 8:45 am]
BILLING CODE 6335-01-M

Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on May 15, 1986, at the Newcomb College, Room 219E, Tulane University, New Orleans, Louisiana. The purpose of the meeting is to conduct a briefing session regarding the community forum on affirmative action.

Persons desiring additional information or planning a presentation to the Committee, should contact Committee Chairperson, Michael Fontham or J. Richard Avena, Director of the Southwestern Regional Office at (512)229-5570, (TDD 512/229-5580). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1986.
Ann E. Goode,
Program Specialist for Regional Programs.
[FR Doc. 86-9260 Filed 4-24-86; 8:45 am]
BILLING CODE 6335-01-M

Louisiana Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 9:30 a.m. and adjourn at 4:00 p.m. on May 16, 1986, at City Hall, Council Chambers, 1300 Pereido Street, New Orleans, Louisiana. The purpose of the meeting is to hold a community forum on affirmative action.

Persons desiring additional information or planning a presentation to the Committee, should contact Committee Chairperson, Michael Fontham or J. Richard Avena, Director of the Southwestern Regional Office at (512)229-5570, (TDD 512/229-5580). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1986.
Ann E. Goode,
Program Specialist for Regional Programs.
[FR Doc. 86-9261 Filed 4-24-86; 8:45 am]
BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m., on May 19, 1986, at City Hall, Council Chambers, 3rd Floor, 15 West Kellogg Street, St. Paul, Minnesota. The purpose of the meeting is to review previous meeting minutes, report on mental health project, and community forum on affirmative action.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Talmadge L. Bartelle, or Clark Roberts, Director of the Midwestern Regional Office at (312) 353-7371, (TDD 312/886-2188). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1986.
Ann E. Goode,
Program Specialist for Regional Programs.
[FR Doc. 86-9262 Filed 4-24-86; 8:45 am]
BILLING CODE 6335-01-M

New Hampshire Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on May 22, 1986, at McLane, Graf, Raulerson & Middleton, 40 Stark Street, Manchester, New Hampshire. The purpose of the meeting is to review progress on the Committee's voter accessibility project and discuss other civil rights developments in the State.

Persons desiring additional information or planning a presentation to the Committee, should contact Committee Chairperson, Robert Wells or Jacob Schlitt, Director of the New England Regional Office at (617) 223-4671, (TDD 617/223-0344). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1986.
Donald A. Deppe,
Program Specialist for Regional Programs.
[FR Doc. 86-9263 Filed 4-24-86; 8:45 am]
BILLING CODE 6335-01-M

Texas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights,

that a meeting of the Texas Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m. on May 9, 1986, at the U.S. Commission on Civil Rights, Conference Room, 418 S. Main, San Antonio, Texas. The purpose of the meeting is to discuss future program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adolph Canales or J. Richard Avena, Director of the Southwestern Regional Office at (512) 229–5570, (TDD 512/229–5580). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 21, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86–9264 Filed 4–24–86; 8:45 am]

BILLING CODE 6335–01–M

Vermont Advisory Committee; Meeting Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Vermont Advisory Committee to the Commission previously scheduled for May 5, 1986, convening at 7:00 p.m. and adjourning at 9:00 p.m., at the Holiday Inn, Carousel Room, Blush Hill Road, Waterbury, Vermont (FR Doc. 86–8322, Page 12724) has a new meeting day.

The meeting location, convening and adjourning times will remain the same. The date of the meeting will change to May 6, 1986.

Dated at Washington, DC, April 21, 1986.

Donald A. Deppe,

Assistant Staff Director for Regional Programs.

[FR Doc. 86–9265 Filed 4–24–86; 8:45 am]

BILLING CODE 6335–01–M

Hearing on the Protection of Handicapped Newborns; Cancellation

Notice is hereby given that the hearing on protection of handicapped newborns, notice of which was published in the **Federal Register** on Monday, March 24, 1986 at page 10041, is postponed until further notice.

Dated at Washington, D.C., April 23, 1986.

Clarence M. Pendleton, Jr.,

Chairman.

[FR Doc. 86–9481 Filed 4–24–86; 9:13 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Foreign Buyer Program; Support for Domestic Trade Shows

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Implementation of the 1987 Foreign Buyer Program.

SUMMARY: This notice sets forth objectives, circumstances and application review criteria associated with the Department's program to support domestic U.S. trade shows.

DATE: These administrative procedures were effective April 22, 1986.

ADDRESS: Export Promotion Services/ Foreign Buyer Program, U.S. and Foreign Commercial Service (US&FCS), International Trade Administration, U.S. Department of Commerce, Room 2808, 14th and Constitution Avenue, N.W., Washington, D.C. 20230, (202/377–0872).

FOR FURTHER INFORMATION CONTACT: Mike Frisby, Director, Marketing Development Division, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 14th & Constitution Avenue, N.W. Room 2808, Washington, D.C. 20230 (202/377–0872).

SUPPLEMENTARY INFORMATION:

Introduction

The International Trade Administration of the U.S. Department of Commerce is accepting applications for the 1987 Foreign Buyer Program.

The Foreign Buyer Program was established to select and promote leading trade shows in the United States in high export potential industries. This program supplants the Trade Fair Certification Program for domestic (U.S.) shows.

The Foreign Buyer Program was created in order to give hands-on assistance to U.S. companies interested in exporting. This assistance is given through increased counseling, marketing analysis, and overseas promotion to potential buyers, agents, and distributors. Shows selected for the Foreign Buyer Program will provide a venue for U.S. companies interested in expanding their products into international markets.

As part of its mission to foster, promote, and develop U.S. commerce, the Department has for many years assisted U.S. firms participating in domestic trade shows to meet with potential foreign buyers, agents and distributors.

In keeping with this policy, the Department implemented the Foreign Buyer Program in May 1985. Under this program, the Department selects and promotes domestic trade shows in potential high-export industries in order to bring foreign buyers together with U.S. firms. The program provides assistance to show organizers in identifying and recruiting new-to-market/new-to-export firms to exhibit in these trade shows.

The Department will select up to 15 events during calendar year 1987. The Department will select those events which satisfy the general selection criteria and which, in its judgment, most clearly meet the Department's objectives. For this reason, failure to be selected should not be interpreted as a finding that the event will not be successful in promoting U.S. exports.

Department of Commerce Support of Foreign Buyer Program Events. The support provided for selected events may differ depending on the specific needs identified and agreed upon by the Department and the show organizer. Services will include, but may not be limited to, special overseas marketing efforts by the staff of the U.S. and Foreign Commercial Service. Such marketing activities include contacting key foreign government and private sales prospects and providing publicity in appropriate Departmental periodicals. US&FCS Account Executive and trade specialists in District Offices identify new-to-export/new-to-market U.S. companies for participation in trade shows.

Specific Department Actions. For selected shows the Department of Commerce will:

(a) Designate an Account Executive as a central contact to work with the show organizer on all aspects of promotion abroad and foreign buyer assistance at the show. The Account Executive will work with the show organizer contact to develop a promotion marketing plan and overall promotional timetable.

(b) Prepare and distribute an informational letter and form ITA–4014P to CEOs (if available) of exhibiting U.S. companies to determine their international business objectives in meeting with foreign buyers (Form 4014P has been approved by the Office of

Management and Budget under control number 0625–0151).

(c) Contact U.S. companies exhibiting at the event and encourage them to meet with foreign buyers attending the show. The Department will print an *Export Interest Directory*, containing pertinent information on those companies that express such interest. *The Export Interest Directory* will list U.S. company names, products or services they wish to export, types on international marketing objective (agent/distributor/direct sales etc.) and geographic areas of interest to the company. This document will be distributed to all U.S. Embassies and Consulates sixty (60) days prior to the event.

(d) Advise and work closely with all interested U.S. Embassies and Consulates to assure maximum trade show promotion.

(e) Promote industry trade show participation through announcements in key domestic and international publications (e.g., regional, posts and embassy commercial newsletters, *Business America*, *Export Promotion Calendar* and *Commercial News USA*).

(f) Provide show organizer with specifications of a DOC-designed International Business Center (IBC), including furniture requirements, DOC office, conference rooms, storage area, etc.

(g) Provide show organizer with specifications for a multi-language brochure; U.S. Embassy/Consulate address labels, shipping instructions and quantities for overseas shipment.

(h) Review with the show organizer potential support by appropriate trade associations, state development agencies, banks, transportation companies, chambers of commerce, and other organizations.

(i) Provide a final show report to both the show organizer and promote Embassies/Consulates not later than 90 days after the show.

(j) Request US&FCS Domestic Offices to provide export counseling or specific marketing information to those U.S. participants which have indicated a need for such counseling both prior to and during the show.

Services Provided at Trade Show Site

(a) Two (2) Account Executives will provide primary management of the International Business Center (IBC) and assist in on-site registration (if appropriate) of foreign buyers and post-organized groups, facilitate matching foreign buyers with exhibiting at trade show about available US&FCS products and services.

(b) Provide export counseling or specific geographic marketing information to exhibitors in a designated area in the International Business Center by a trade specialist from a US&FCS Domestic Office and offer information on all US&FCS products and services. Assist foreign buyers to meet their purchasing/representation objectives during the show.

(c) Participate, as appropriate, in special export service seminars specifically aimed at new-to market/new-to-export firms exhibiting at trade show.

(d) Encourage local bank and financial institutions to have a representative available to provide export finance counseling.

Specific Responsibilities of the Show Organizer

(a) Designate an official authorized to work with the US&FCS Account Executive on all aspects of the show promotion.

(b) Provide the Account Executive with a contact during the show to assist with foreign visitor information and product referral.

(c) Provide the US&FCS with a current list of exhibitors, with names and address of CEO or appropriate contact. The name of contact should, if possible, be the decision maker of the exhibiting firm on international matters. The exhibitor list should be on gummed mailing labels.

(d) Produce and distribute a multi-language promotional brochure in the quantities specified by the Account Executive. Draft of brochure must be approved by the Account Executive prior to printing. These brochures must be printed not less than six months prior to the show.

(e) Provide all exhibitors at the convention site with information about the IBC and US&FCS services.

(f) If available, provide to the US&FCS names and addresses of foreign attendees at previous shows. Provide a list of pre-registered foreign attendees at the current show, including names, addresses, and business interests. Both lists are to be provided by country and on a mutually agreed date.

(g) Establish a registration system to assure US&FCS Account Executives access to all foreign attendees at time of registration. On a daily basis provide number of registered foreign attendees, if possible.

(h) Establish an International Business Center (IBC) at the show in a prominent location, preferably adjacent to the main registration area. Show organizer agrees to construct the IBC (minimum of 1000 sq. ft.) according to DOC design specifications which should include: (a) A separate registration area for foreign visitors; (b) appropriate furniture and office equipment, telephone, assured access to international calling, telex, etc; (c) interpreters; (d) registration staff and support; and (e) DOC office conference rooms, storage area, refreshments, lounge, etc. The IBC must be given high visibility in show catalog/program and daily newletters, floor plans, and by strategically placed signs at the exhibition entrance, registration area and on the exhibition floor.

(i) On an agreed date following the show, provide the US&FCS with a registration printout of the names and addresses of the foreign attendess, by country.

(j) Upon notification of acceptance into the Foreign Buyer Program, remit the appropriate user fee. For calendar year 1987 the fee is $3,000.

Selection. Selection indicates that the Department has found the event to be a leading international trade show worthy of participation by U.S. exporting firms and promotion in overseas markets by U.S. Embassies and Consulates. Selection does not constitute a guarantee by the U.S. Government of success of the show or of the undertakings or obligations of the show organizer. Selection is not an endorsement of the show organizer except as to its Foreign Buyer activities. Each successful applicant will be given copies of an official U.S. Department of Commerce logo and/or logo of the U.S. and Foreign Commercial Service for use in its advertising promotional materials.

General Selection Criteria. Subject to Departmental budget and resource constraints, selection will be granted to those events which, in the judgment of the Department, most clearly and best meet the following criteria:

(a) *Export Potential:* The products and services to be promoted at the trade show should be from U.S. industies which have high export potential as determined by U.S. Department of Commerce sources.

(b) *International Interest:* Trade shows will be selected which meet the needs of a significant number of overseas markets covered by the U.S. and Foreign Commercial Service, correspond to marketing opportunities as identified by these posts, and which warrant the attention and promotional effort by those overseas posts. Previous foreign audience attendance at the show may be used as an indicator.

(c) *Scope:* The event must offer a broad spectrum of U.S. products and/or services. Trade shows with a majority of American firms exhibiting will be given preference.

(d) *Stature:* The trade show must be clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally and as a showplace for the latest technology or techniques in that industry.

(e) *Exhibitor Interest:* There must be a clearly demonstrated interest on the part of U.S. exhibitors to receive international business visitors during the trade show. A significant number of these exhibitors should be new-to-export or seeking to expand into additional foreign markets.

(f) *Logistics:* The trade show site, facilities, transportation services and availability of accommodations must be in keeping with the stature of an international-class trade show.

(g) *Cooperation:* Successful applicants will be required to enter into a Memorandum of Understanting which sets forth the specific actions to be performed by the show producer/owner and the USDOC. There must be a willingness on the part of the trade show organizer to cooperate with the US&FCS to further ITA export expansion goals.

When, Where and How To Apply for Selection in the 1987 Foreign Buyer Program

Collection of the information required in an application is authorized by law (15 U.S.C. 1512 *et seq.*). The Office of Management and Budget has approved the information collection requirement contained in these regulations under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). OMB Control Number 0625–0130. Approved for use through 08/31/88.

A trade show will not be considered for the 1987 Foreign Buyer Program unless a completed application has been received by the Marketing Development Division no later than June 6, 1986. Applications reviewed will be considered for a calendar year 1987 only. Shows not selected and which want Foreign Buyer Program support for a succeeding year must submit a new application.

Except to the extent required by laws, no information of a proprietary nature reported on this form will be disclosed without the prior written consent of the relevant firm.

Please type the information requested on company letterhead and mail three (3) complete sets of your application to: Office of Marketing Program, U.S. and Foreign Commercial Service, International Trade Administration, Room 2808, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, D.C. 20230

(1) Name of show.

(2) Site of show.

(3) Dates of show. Indicate if show is held annually, biennially, or other.

(4) Name, address, and phone number of applicant.

(5) Name, address, and phone number of applicant contact.

(6) Name, address, and phone number of show sponsor (trade association, national or state government, etc.)

(7) Basic history or description of show. Applicant must demonstrate that subject is a leading international trade show for the industry. Include copies of previous show promotion materials.

(8) Resume of applicant's show experience.

(9) Planned number of U.S. exhibitors. A majority of show exhibitors must be of U.S.A. origin.

(10) Specify gross area of show (sq. ft.or sq. mtrs.). Net area for exhibit space (show U.S. and foreign separately).

(11) Admission fees for show visitors and indicate if there is a reduced fee for international visitors.

(12) Description of technical program and cost to attend (if applicable).

(13) Product categories to be displayed.

(14) Audience profile of potential foreign customers (target countries, industries, profession or technical level).

(15) Submit 3 sets of all show promotional literature, including show catalog, for previous show.

Applicant must type the following on the application and submit with the appropriate signature:

"The above information is correct and the applicant will abide by the terms set forth in the Notice of Implementation of the Foreign Buyer Program fior 1987, No —— **Federal Register** Notice, Date —— ."

Applications will be processed by the Marketing Development Division, Export Promotion Services and final selection of events will be made by June 27, 1986.

Fee: The Department will charge a fee of $3,000 for shows selected and promoted during calendar year 1987.

Mike Frisby,

Director, Marketing Development Division, Export Promotion Services, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.

[FR Doc. 86–9254 Filed 4–24–86; 8:45 am]

BILLING CODE 3510-FP-M

National Bureau of Standards

Advisory Committee for International Legal Metrology; Termination

Having accomplished its purpose, the Advisory Committee for Interntional Legal Metrology shall terminate on April 25, 1986, as provided by the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The Committee, first established on March 20, 1974, and recharted last on April 25, 1984, has advised the Department of Commerce through the Director, National Bureau of Standards (NBS), on technical and policy matters relating to NBS' assigned responsibility for the development of U.S. positions on technical issues arising in the International Organization of Legal Metrology (OIML).

FOR FURTHER INFORMATION CONTACT: Mr. David E. Edgerly, Committee Control Officer, Standards Management Program, Office of Product Standards Policy, National Bureau of Standards, Gaithersburg, MD 20899, telephone 301–921–3287.

Dated: April 21, 1986.

Ernest Ambler,

Director, National Bureau of Standards.

[FR Doc. 86–9278 Filed 4–24–86; 8:45 am]

BILLING CODE 3510-13-M

[Docket No. 51208–5208]

Federal Information Processing Standard 21–2, COBOL; Correction

AGENCY: National Bureau of Standards, Commerce.

ACTION: Final notice; correction.

SUMMARY: In FR Doc. 86–5852, appearing on pages 9237–9239 in the issue of Tuesday, March 18, 1986, make the following correction: On page 9238, second column, COBOL Subsets table, under *"Required,* Sort-Merge", correct number for "High" should read "1".

FOR FURTHER INFORMATION CONTACT: Ms. Mabel Vickers, Center for Programming Science and Technology, Institute for Computer Sciences and Technology, National Bureau of Standards, Gaithersburg, MD 20899, (301) 921–2431.

Dated: April 21, 1986.

Ernest Ambler,

Director.

[FR Doc. 86–9279 Filed 4–24–86; 8:45 am]

BILLING CODE 3510-CN-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1986, Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1986 a commodity to be produced by and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 25, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Flectcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On July 19, November 15, December 13, 1985, and January 24 and February 7, 1986, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (50 FR 29469, 50 FR 47245, 50 FR 50936, 51 FR 3237 and 51 FR 4785) of proposed additions to Procurement List 1986, October 15, 1985 (50 FR 41809).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1986:

Commodity

Dining Packet 7360–01–J19–2026.

Services

Commissary Shelf Stocking for the following locations in San Diego, California:

1. Naval Station
2. Naval Air Station-Miramar
3. Naval Air Station, North Island
4. Naval Training Center

Commissary Shelf Stocking, Branch Commissary Store, Little Creek Naval Amphibious Base, Building 3324, Norfolk, Virginia

Branch Commissary Store, Building 350, Norfolk Naval Shipyard, Portsmouth, Virginia, and

Janitorial/Custodial, Federal Building, 500 Quarrier Street, Charleston, West Virginia

C. W. Fletcher,

Executive Director.

[FR Doc. 86–9288 Filed 4–24–86; 8:45 am]

BILLING CODE 6820–33–M

Procurement List 1986, Proposed Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1986 commodities to be produced by and services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before May 28, 1986.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodity and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodity and services to Procurement List 1986, October 15, 1985 (50 FR 41809):

Commodity

Pillow, Bed Feather, 7210–00–205–3205, (Portion of Government requirement not on Procurement List)

Services

Commissary Warehousing Service, Columbus Air Force Base, MS

Janitorial/Custodial

Potomac Annex Building 1–7, 23rd Road & E Street NW.

Central, East & South Buildings, 2430 E Street NW. and 1724 F Street NW. Washington, DC

Deletions

It is proposed to delete the following commodities and service from Procurement List 1986, October 15, 1985, (50 FR 41809):

Commodities

Pad, Examining Table, 6530–00–960–6616

Pad, Hospital Stretcher, 6530–00–269–0004

Service

Commissary Shelf Stocking and Custodial, Peterson Air Force Base, CO

C.W. Fletcher,

Executive Director.

[FR Doc. 86–9287 Filed 4–24–86; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Meeting Date Change

21 April, 1986.

The meeting of the Army Science Board 1986 Summer Study Panel on C³I Requirements for AirLand Battle, which was scheduled for 9 May 1986 (see **Federal Register** of April 23, 1986), has been changed to 23 May 1986.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86–9304 Filed 4–22–86; 3:25 pm]

BILLING CODE 3710–08–M

Army Science Board's Ad Hoc Subgroup; Chief of Staff Task Force on Soldiers and Families; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of Meeting: 12 May 1986.

Time: 0900–1500.

Place: Pentagon, Room 3E635, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup, Chief of Staff Task Force on Soldiers and Families, will meet for briefings and discussions with the Chief of Staff, Army. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer,

Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-9307 Filed 4-24-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board AHSG on Ballistic Research Laboratory Effectiveness Review; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Monday & Tuesday, 12-13 May 1986.

Times of Meeting: 0800-1700.

Places: AMSER Corporation, Arlington, VA.

Agenda: The Army Science Board AHSG on Ballistic Research Laboratory Effectiveness Review will meet to receive briefings by numerous users of BRL. Briefings will be presented by each directorate covering their work program. The panel will meet in executive session to discuss the methodology for conducting the review and to discuss observations as a result of the briefings. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 86-9305 Filed 4-24-86; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board Steering Committee; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday, 13 May 1986.

Times of Meeting: 0900-1200 hours.

Place: Pentagon (Room 2E687A), Washington, DC.

Agenda: The Army Science Board Steering Committee will meet for discussions of topics and future plans for the Board. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 86-9306 Filed 4-24-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research, Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of final funding priorities for research fellowships for fiscal year 1986.

SUMMARY: The Secretary of Education announces final funding priorities for research fellowships to be supported by the National Institute of Handicapped Research (NIHR) in fiscal year 1986. In the past, NIHR has funded some fellowships without specifying priority areas, as well as a number of fellowships based on announced priorities. The regulations provide that the Secretary may set priorities when there are critical areas to be addressed. The Secretary has determined that research fellows are needed in the following priority areas; utilization of rehabilitation technology; rehabilitation research training and utilization; medical rehabilitation finance policy; rehabilitation information technology; rehabilitation service statistics; and mental retardation research.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Rheable Edwards, National Institute of Handicapped Research. Telephone (202) 732-1200 deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

SUPPLEMENTARY INFORMATION: The purpose of this program is to build research capacity and also to allow the Secretary to obtain the benefits of research conducted by highly qualified individuals. This research has a direct bearing on the development of programs, methods, procedures, and devices to assist in the provision of rehabilitative services to individuals.

NIHR fellowship regulations in 34 CFR Part 356, (46 FR 45312, September 10, 1981, as amended June 18, 1984 at 49 FR 24978), authorize the Secretary to establish priorities for fellowships by reserving funds to support fellowships in particular areas.

These priorities were proposed for public comment through publication in the **Federal Register** on November 20, 1985 (50 FR 47797). One comment was received, suggesting that NIHR add a fellowship in adaptive environmental design. No changes were made to the proposed fellowship priorities since NIHR is announcing a priority for a Research and Demonstration project in this area.

The publication of these priorities does not bind the United States Department of Education to fund fellowships in any or all of these research areas. Funding of particular fellowships depends on both the availability of funds and on the receipt of satisfactory applications.

Priorities

• Fellow in Utilization of Rehabilitation Technology

There have been significant advances in the development of technology to enhance communication, mobility, independent living, employment, and education for disabled individuals. However, there are indications that many disabled individuals are not obtaining the maximum possible benefits of existing technology due to deficits in the systems for publicizing, distributing, and financing rehabilitative technology, aids, and devices, and in the integration of technology into the total rehabilitation service delivery system.

An absolute priority will be given to applications for a fellow in this area who will:

• Review the various funding resources which finance the purchase and maintenance of technological devices as well as the support services necessary to achieve full use of technology (including various significant Federal, State, voluntary, and private funding sources);

• Analyze various financing options and the long and short-term cost implications of each;

• Analyze the techniques and effects of publicizing technological devices for rehabilitation; and

• Review the frequency and adequacy of distribution and financing of various types of technology and determine whether certain categories of technology or types of devices require special efforts to assure more adequate distribution (e.g., so-called "orphan technologies").

• *Fellow in Rehabilitation Research Training and Utilization.*

There is a substantial mass of new knowledge in the area rehabilitation regularly generated by research efforts, including those funded by NIHR through the Research and Training Centers (RTCs) and the Rehabilitation Engineering Centers (RECs). However, preliminary observations suggest that research accomplishment could have more impact if there were improved efforts at dissemination of information and training of relevant audiences in the utilization of research results.

An absolute priority will be given to applications for a fellow in this area who will:

• Assess the "state-of-the-art" in information dissemination in the rehabilitation research field, including a survey of the practices and products developed for information dissemination in the RTCs and RECs as leaders in the rehabilitation research field;

• Review current training programs designed to prepare service practitioners and other relevant audiences to use new knowledge and techniques developed through research; such a review would discover the types of audiences involved, levels, funding sources, length and intensity of training, and the knowledge bases from which curricula are developed;

• Assess the extent of collaboration among various training providers such as RTCs and RECs, in such areas as the development of training agenda, information sharing, and shared curriculum development; and

• Develop one or more models for improved information dissemination and training procedures in major research centers, including methods of staffing, planning, materials development, audience identification, targeting audiences, and self-assessment.

• *Fellow in Medical Rehabilitation Finance Policy.*

Mechanisms and sources of payment for restorative rehabilitation services in this country are diverse and complex. The multiplicity of Federal payment and reimbursement programs, as well as statutory, policy, and procedural variations in implementing Federally-authorized programs at the State and local level are not clearly understood. In addition, there are State and private sector sources of funding for rehabilitation hospital and restorative services, but it is unclear what services are covered, who pays for which rehabilitation services, and what mechanisms of payments are used. Recent development in payment mechanisms for medical services, such as the emergence of health maintenance organizations (HMOs), the development of Medicare's Prospective Payment System (PPS), and the continuing evolution of Preferred Provider Organizations and other competition-promoting service financing strategies seems to be fostering the proliferation of medical rehabilitation facilities. Some suggest that this apparent trend is due to the temporary exclusion of medical rehabilitation services from Medicare's PPS and its cost-reduction implications. This phenomenon, however, is not well-documented or well-explained, nor are the implications clear for the availability and quality of services. The rehabilitation community should be developing new models for the deployment of funds for rehabilitative services and also defining policy issues in which a better understanding is needed.

An absolute priority will be given to applications for a fellow in this area who will:

• Identify and assess Federal and State sources of payment and reimbursement for medical rehabilitation facilities and services, and describe the major private sector sources of payment and reimbursement for restorative rehabilitation services, including private health insurance, voluntary agencies, and corporate self-insurance; and

• Develop one or more models for planning for the most effective use of funds through current sources for the purchase of medical rehabilitation services.

• *Fellow in Rehabilitation Information Technology.*

In recent years there has been a proliferation of new technologies to support rapid and efficient exchange of information and communication among geographically and administratively diverse agencies. New technologies include computers, electronic mail, teleconferencing, database systems, computer-assisted training programs, and computerized assessment systems. Preliminary observation suggests that there are vast differences in the extent to which State rehabilitation agencies understand and use these technologies to support both management and service activities, including rehabilitation counseling, training, research, information sharing, assessment, job placement, and management systems.

An absolute priority will be given to applications for a fellow in this area who will:

• Review the use of information technologies in State rehabilitation agencies and NIHR grantees;

• Determine the patterns, frequency, and formats of information needed by State agency personnel and NIHR grantees to facilitate the performance of their tasks;

• Develop a model to assess the cost-effectiveness of these technologies in State rehabilitation agencies and NIHR grantees; and

• Propose new method to increase or refine the volume of useful information which can be exchanged among State agencies, and between State agencies and information providers, such as NIHR grantees, and methods by which automated programs can be used by the rehabilitation counselor to improve "hand-on" services.

• *Fellow in Rehabilitation Service Statistics.*

There are not adequate date about the volume and type of rehabilitation services typically required for inpatient restoration and rehabilitation for individuals with disabilities other than spinal cord injury. Such data would be valuable in planning the deployment of resources to study, understand, and improve rehabilitation processes for individuals with these disabilities.

An absolute priority will be given to applications for a fellow in this area who will:

• Evaluate data from rehabilitation hospitals, rehabilitation units in general hospitals, and secondary sources such as prior studies;

• Assess the adequacy of disability categories used, and the adequacy of data on length of stay, costs, and other elements;

• Review prior studies of these issues for adequacy of methodology, availability of data and access to data sources and findings;

• Discuss the literature and trends in duration and cost of treatment and other relationships evident in the data;

• Determine analyses which can be conducted to yield information on service delivery patterns and costs as related to diagnostic categories; and

• Propose models for future collection and coordination of data on rehabilitation service units.

• Fellow In Mental Retardation Research

In the past decade there have been major improvements in the range of opportunities available to mentally retarded individuals. Preliminary observations indicate that these developments have resulted at least in part from advances in knowledge in several areas: techniques of habilitation/rehabilitation to enhance learning and improve behavior in individuals; information to improve service delivery mechanisms and patterns; and information leading to policy adjustments such as

deinstitutionalization and mainstreaming. NIHR is interested in facilitating the development of new knowledge to support further expansion of options and achievements in habilitation/rehabilitation for mentally retarded individuals. However, future planning must be based on a thorough understanding of current knowledge in rehabilitation techniques, service delivery models, and policy considerations.

An absolute priority will be given to applications for a fellow in this area who will:

- Review the state-of-the-art in research in areas of mental retardation related to techniques of rehabilitation intervention, effective patterns of service delivery, and policy options;
- Assess the knowledge needs to effect further improvements in opportunities for this disability category;
- Assess the adequacy of the current state of research methodology and other resources to undertake improvements in the knowledge base; and
- Suggest a research agenda for the next five years, including options for various goals and levels of effort.

(29 U.S.C. 760–762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: April 22, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-9316 Filed 4-24-86; 8:45 am]

BILLING CODE 4000-01-M

Rehabilitation Long-Term Training Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Year 1986.

SUMMARY: The Secretary proposes funding priorities for long-term training grants in the field of Rehabilitation Counseling to ensure effective use of program funds and to direct funds to areas of identified need during fiscal year 1986. The Secretary will reserve funds for applications meeting these priorities.

DATE: Comments must be received on or before May 27, 1986.

ADDRESS: All written comments and suggestions should be sent to Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3324–M/S 2312), Washington, DC. 20202.

FOR FURTHER INFORMATION CONTACT: Delores L. Watkins, Office of Developmental Programs, Rehabilitation Services Administration. Telephone: (202) 732–1332.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established at 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Training Program is to support projects designed to train personnel for employment in public and private agencies involved in the rehabilitation of physically and mentally handicapped individuals, especially those who are the most severely handicapped.

Eligible Applicants

Awards are made under this program to State vocational rehabilitation agencies and other public or nonprofit agencies or organizations, including institutions of higher education.

Proposed Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to long-term training applications submitted in the field of Rehabilitation Counseling in fiscal year 1986 that respond to one of the priorities described below. An absolute preference is one which permits the Secretary to select only those applications that meet the described priorities.

All applications submitted in the long-term training of rehabilitation counseling must be designed to improve and strengthen the capacity of rehabilitation counselors to place severely disabled individuals into employment, especially competitive employment. All training must include a job development and job placement component in one of the following areas:

Priority 1

The training under this priority must include placement services that will directly involve students with business and industry in providing rehabilitation services to severely physically and mentally disabled individuals. The placement coursework must be designed to enable students to acquire skills and knowledge in the areas of: (1) Job development, analysis, job modification, and job restructuring; (2) workers' compensation; (3) forecasting labor market trends; (4) the applicability of sections 503 and 504 of the Rehabilitation Act and their implications for placement of disabled individuals; and (5) effective consultation with employers and potential employers to identify employment opportunities for disabled individuals, to assist in the removal of barriers to the employment of disabled individuals, and to educate or train employers and potential employers about various disabilities and any vocational implications of those disabilities. Practicum training must include job development and job placement activities that involve students directly with business and industry. A primary element of the training must be the direct participation of students with business and industry in placing disabled individuals into competitive employment and may include actual participation of students in practicum experiences in business and industry settings. The training must be at the master's degree level.

Priority 2

The training under this priority must include a training curriculum that will prepare rehabilitation personnel to provide supported employment services to severely disabled adults. Supported employment, as used here, means paid work in a variety of integrated settings that include both handicapped individuals and non-handicapped individuals, particularly regular work sites, especially designed for severely handicapped individuals, irrespective of age or vocational potential—(1) for whom competitive employment at or above the minimum wage has not traditionally occurred; and (2) who, because of their disability, need intensive on-going post-employment support to perform in a work setting. The proposed training curriculum must include coursework to enable students to acquire skills and knowledge in the areas of: (1) Behavioral analysis; (2) task analysis; (3) job development, job modification, job accommodation, and job placement; (4) specific job-skills training; (5) employer relations; and (6) union relations. In addition to the specific skills previously listed, training is expected to provide students with knowledge about the various social service systems which affect the lives of disabled individuals, including: (1) State vocational rehabilitation agencies; (2) State developmental disabilities agencies; (3) State employment security systems; (4) workers' compensation; (5) private rehabilitation systems within industry; (6) projects with industry; (7) independent living programs; (8) sections 501, 502, 503, and 504 of the

Rehabilitation Act and their implications for placement of disabled individuals; and (9) provisions of the Social Security Act which relate to disabled individuals. Students must be provided practicum experiences at supported employment sites. Because of the required practicum experience element, applications must show evidence of an on-going established relationship with supported employment programs. The training must be at the bachelor's degree level or above.

Priority 3

The training under this priority must prepare rehabilitation personnel to develop jobs for and place severely disabled individuals into competitive employment in business and industry settings. The training must also focus on supported employment placements of disabled individuals in business and industry settings. Training supported under this priority must include a curriculum that combines the specific skills designated under the previous two priorities. The training must be at the doctoral level.

A separate application review competition will be conducted for each of the three priorities described for the rehabilitation long-term training field of Rehabilitation Counseling. Each application must respond to only one of the described priorities.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before the 30th day after publication of this document will be considered before the Secretary issues the final priorities. All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3324, Mary E. Switzer Building, 330 C Street, SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m. (local time), Monday through Friday of each week except Federal holidays.

(29 U.S.C. 774)

(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: April 22, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-9315 Filed 4-24-86; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Awards for the Most Energy-Efficient Refrigerators and Freezers

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of proposed action and request for comment and information. *BPA File No.* AEP-1. BPA requests that all comments and information submitted in response to this notice contain the file number AEP-1.

SUMMARY: The Bonneville Power Administration began implementing its "Cold facts. Hot ideas." campaign in February 1986. The campaign promotes energy efficiency to consumers who are planning to buy new major electrical appliances (refrigerators, freezers, clothes washers, and dishwashers). The campaign goal is to increase the "market share" of energy-efficient models purchased in the Pacific Northwest region.

BPA believes that the most effective way to achieve this goal is to clearly identify for consumers and appliance retailers which models are the "most energy-efficient."

This notice describes a proposed action by BPA to identify and promote the most energy-efficient new refrigerators and freezers on the market, and requests comments on the proposed action.

This notice also requests manufacturers of refrigerators and freezers to provide BPA with the following information:

1. Refrigerator models with thru-the-door ice service; and

2. Models in the market in 1986 which are not listed in the 1985 or 1986 Directories of Certified Refrigerators and Freezers, published by the association of Home Appliance Manufacturers (AHAM).

This information is requested so that BPA can determine which models will qualify for an "Energy Winner" award sticker in 1986 and are eligible to be listed in a BPA brochure (to be submitted for printing by June 1, 1986).

Responsible Official: Sydney D. Berwager, Director of Residential Conservation Programs, is the official responsible for development and implementation of the proposed action.

DATES: Comments on the proposed action and information requested from refrigerator and freezer manufacturers are due to BPA by May 22, 1986.

ADDRESSES: Written comments and information should be addressed to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Mr. Grant W. Vincent, Consumer Products and Services Branch (KRP), Office of Conservation, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208. Telephone (503) 230-5499. Information may also be obtained from:

BPA's Public Involvement office, P.O. Box 12999, Portland, Oregon 97212. Telephone numbers, voice/TTY, for the Public Involvement office are: 503-230-3478 in Portland; toll-free 80-452-8429 for Oregon outside of Portland; 800-547-6048 for Washington, Idaho, Montana, Utah, Nevada, Wyoming, and California.

Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 N.E. Irving Street, Portland, Oregon 97232, 503-230-4551.

Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside avenue, Spokane, Washington 99201, 509-456-2518.

Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509-662-4377, extension 379.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.

Mr. Terence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206-442-4130.

Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-525-5500, extension 701.

Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208-523-2706.

Mr. Frederic D. Rettenmund, Boise District Manager, 550 W. Fort Street, Rm. 376, Boise, Idaho 83724, 208-334-9137.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

A. Legal Authority

The Pacific Northwest Power Planning and Conservation Act, 16 U.S.C. 839 et seq. (Pacific Northwest Power Act), provides for the development of cost-effective conservation as the first priority in meeting the electrical energy needs of the region. The Pacific Northwest Power Act also provided for the establishment of the Northwest Power Planning Council (Council) to develop a 20-year power plan for the Pacific Northwest. In accordance with the Pacific Northwest Power Act, the Council adopted the "1983 Northwest Conservation and Electric Power Plan," which recommended that BPA:

> "Develop and implement (in cooperation with utilities, trade and professional associations, educational institutions, community organizations, and other interested parties) education and marketing programs regarding energy-efficient appliances for distributors, dealers, and purchasers (homeowners, rental property managers, etc.)."

The Council recently revised the power plan by adopting the "1986 Northwest Power Plan," which recommends that BPA:

> "Assess the effectiveness of various marketing strategies and incentives in promoting the purchase of the most efficient appliances that are available. These strategies should promote purchases of more efficient appliances at the time of normal replacement. Early retirement of existing appliances should not be encouraged."

B. Purpose and Intent

The purpose of the proposed action is to increase the "market share" of energy-efficient refrigerators and freezers purchased in the Pacific Northwest. The proposed action will affect appliance purchasers (consumers), retailers, distributors, and manufacturers. BPA expects that the proposed action will result in consumers purchasing refrigerators and freezers that are more energy-efficient than would have been purchased without the action. The proposed action should result in lower life-cycle costs (purchase price plus operating cost) to consumer appliance purchasers. On a regional level, the total number of units purchased should not be affected by the proposed action. However, individual appliance retailers, distributors, and manufacturers may experience an increase or decrease in the number of units sold, depending on the energy efficiency of their product offerings.

C. Scope of the Action

The proposed action covers new refrigerators and freezers sold in the BPA service territory (Oregon, Washington, Idaho, Western Montana, and portions of Northern California, Nevada, and Utah, and Western Wyoming) in 1986. BPA is not proposing that the action cover other appliances (such as clothes washers and dishwashers) at this time.

D. Activities to Date

BPA has conducted market research, the purpose of which was to determine how BPA should design an appliance efficiency promotion campaign. The major findings of the market research are:

1. Consumers are generally unaware of the wide range of efficiencies in new appliances.
2. Consumers are often willing to pay more for an energy-efficient model, as long as they can get the other features they want.
3. Consumers have difficulty understanding and using EnergyGuide labels.
4. For the campaign to be successful, it is important to clearly identify the most energy-efficient models at the point of purchase (in appliance retail stores).

A draft proposed campaign design was distributed to interested parties for review and comment on November 8, 1985. Comments received were incorporated into a final proposed campaign design, which was approved by BPA management on December 6, 1985.

BPA began implementing the campaing—"Cold facts. Hot ideas."—in February 1986. The campaign is designed to increase consumer awareness of the range of energy efficiencies in new appliances (refrigerators, freezers, clothes washers, and dishwashers).

BPA is now proposing to establish energy efficiency qualification levels (EEQLs) for new refrigerators and freezers. Models which meet or exceed the EEQLs will be awarded special recognition from BPA. This special recognition will be in the form of "Energy Winner" award stickers, which will be provided to appliance retailers to affix to qualifying models on display in their stores. The qualifying models will also be listed in a brochure, which will be provided free-of-charge to appliance retailers and to consumers who call a toll-free telephone number. BPA plans to establish new EEQLs each year using the procedure proposed in section (II.B.) of this notice.

BPA is now soliciting public comment on the proposed activities.

E. Compliance with NEPA

BPA has determined that the proposed action is excluded from the requirements of preparing either an Environmental Assessment or an Environmental Impact Statement, as specified in Council on Environmental Quality Regulations and Department of Energy Guidelines (February 23, 1982, 47 FR 7977).

F. Issues

1. *Procedure for Establishing EEQLs.*—BPA identified a number of objectives before developing the proposed procedure for establishing EEQLs for refrigerators and freezers. The procedure should:

a. Be based on the industry's current product offering.

b. Be fair and objective (non-arbitrary) in establishing qualification levels.

c. Meet consumer needs (recognize that other major features are often more important to consumers than energy efficiency). The procedure should establish EEQLs for each size group of each major product class.

d. Be somewhat restrictive (so that only very energy-efficient models qualify for the BPA "Energy Winner" award sticker), yet give consumers an adequate number of qualifiying models from which to choose.

e. Be practical (make use of existing, accepted data).

BPA believes the proposed procedures outlined in section (II.B.) of this notice meets these objectives. BPA has prepared a document that addresses a number of issues related to the proposed procedure (see section IV.—Availability of Documents). The document describes why BPA is proposing to:

a. Establish new EEQLs each year;

b. Base the qualification levels on energy efficiency, rather than on operating cost (energy consumption);

c. Use "energy factors" as a measure of energy efficiency;

d. Use 4-cubic-foot size groups, instead of the 2-cubic-foot size groups established by the Federal Trade Commission (FTC);

e. Base the EEQLs each year on the models appearing in the January edition of the AHAM Directory of Certified Refrigerators and Freezers (AHAM Directory); and

f. Establish EEQLs such that approximately 15 percent of models

listed in the AHAM Directory will qualify.

2. *Non-Uniformity of the Market*—The data in the January 1986 edition of the AHAM Directory demonstrate that the energy efficiency of models can vary widely from one size group to another in the same product class. BPA is generally proposing to establish EEQLs such that at least 15 percent of the models in each size group will qualify. Because there are often many models with the same energy efficiency in a group, the number of models that qualify often exceeds 15 percent.

However, there are many instances where: (1) All models in a size group have the same (or nearly the same) energy efficiency, or (2) a model appears to be very energy-efficient in its size group but not very efficient when compared to models in the next larger size group. In these instances, BPA believes it is inappropriate to set EEQLs such that 15 percent of the models in every size group will qualify. To compensate for the non-uniformity of the market, BPA proposes to establish EEQLs that are more stringent (resulting in fewer than 15 percent of models that qualify) for certain size groups. These more-stringent EEQLs result from the following principles:

a. If all models in a size group have the same energy efficiency, or the most efficient model is within 10 percent of the least efficient model, none of the models should be identified as "energy winners."

b. No more than 50 percent of the models should be identified as "energy winners" when there is at least one model in the group that is more energy-efficient.

c. No more than 75 percent of the models in a size group should be identified as "energy winners."

d. It is not "fair" to identify a model from a group of smaller sized units as an" "energy winner" when its energy consumption is greater than or equal to the energy consumption of a larger model which did not qualify in its size group.

3. *Identification of Qualifying Models*—As described in section (II.A) of this notice, all models which meet or exceed the EEQLs for the current year are eligible to receive "Energy Winner" award stickers and be listed in the brochure. BPA is primarily relying on the January edition of the AHAM Directory to identify which models qualify. However, there are a number of models in the market which may qualify and are not listed in this directory. These include:

a. Models listed in previous AHAM Directories;

b. Newer models not yet listed in the AHAM Directory;

c. Models from manufacturers who do not participate in AHAM certification program.

BPA is proposing that the brochure also include qualifiying models from the AHAM Directories for the previous year (January and June editions) and any other qualifying models which BPA is made aware of by manufacturers.

4. *Qualifying Models from Previous Years*—To distinguish between models that quality one year but not the next, the "Energy Winner" award sticker will show the current year (1986 for example) and will state that the model met the EEQLs for the current year.

5. *Assuring Proper Use of the "Energy Winner" Award Stickers*—Participating retailers will be instructed to only place the "Energy Winner" award stickers on models which have been certified by BPA as meeting the EEQLs. Certified models are defined as those which are either listed in the BPA brochure or listed in supplements to the brochure (which will be distributed periodically to participating retailers).

BPA proposes to rely primarily on consumers to assure that the stickers are only placed on qualifying models. All retailers who receive the stickers from BPA will be required to provide consumers with a copy of the brochure. In addition to listing the qualifying models, the brochure will specify the EEQLs for the current year and explain how to determine if a particular model qualifies.

The sticker will include a message to consumers to "request a copy of the brochure from the retailer and verify that the model qualifies for the sticker." If the model is not listed in the brochure, consumers can either use the formulas in the brochure to determine if the model qualifies or ask the retailer to show them the updated list of certified models. The sticker will also include a toll-free telephone number for consumers to call if they fell that the sticker has been placed on a model which does not qualify.

BPA will also conduct spot checks to assure that the stickers are being used properly by retailers. Retailers that place the stickers on non-certified models may not be eligible to receive the stickers in future years.

6. *Product Endorsement Disclaimer*—BPA does not intend to endorse or warrant the performance of any product through the proposed action. To avoid the appearance of a product endorsement, both the "Energy Winner" award sticker and brochure will include a disclaimer. The disclaimer will state that BPA in no way endorses or warrants any models as products. The disclaimer will also state that BPA is only providing information about the energy efficiency of models, as determined by standard formulas and laboratory tests, with industry-supplied information.

II. Proposed Action

A. Process

BPA will establish Energy Efficiency Qualification Levels (EEQLs) each year for new refrigerators and freezers according to the procedure outlined in section (II.B.) of this notice. Models which meet or exceed the EEQLs will be listed in a brochure and will be eligible to receive "Energy Winner" award stickers.

All models listed in the January edition of the AHAM Directory of Certified Refrigerators and Freezers (AHAM Directory) for the current year or in the AHAM Directories for the previous year (January or June editions) which meet or exceed the current year's EEQLs will automatically be listed in the BPA brochure. If the same model number is listed in more than one of the AHAM Directories, the data from the most recent AHAM Directory will be used. BPA will assume the information in the AHAM Directory is correct, unless otherwise notified by AHAM or individual manufacturers.

Manufacturers will be responsible for notifying BPA or other qualifying models not listed in the specified AHAM Directories (new models not yet listed, older models still in the market, or models produced by manufacturers who do not participate in the AHAM certification program). Manufacturers must provide BPA with certification that their models have volume and energy cost ratings determined in the same manner as models which are listed in the AHAM Directory. Specifically:

1. The refrigerated volume must have been independently verified in accordance with American National Standard ANSI/AHAM HRF-1 for household refrigerators, combination refrigerator-freezers, and household freezers.

2. The Federal Trade Commission (FTC) Annual Energy Cost must have been determined according to the FTC Rule for Using Energy Costs and Consumption Information Used in Labeling and Advertising for Consumer Appliances Under the Energy Policy and Conservation Act (16 CFR Part 305).

BPA will notify AHAM and refrigerator and freezer manufacturers each year (usually by March) of the EEQLs for that year. Manufacturers will

have approximately one month to notify BPA of qualifying models not listed in the AHAM Directories specified above. BPA will then produce a brochure that lists all qualifying models for the current year. The brochure and "Energy Winner" award stickers will be distributed to appliance retailers who are participating in the "Cold facts. Hot ideas." campaign. BPA will also periodically provide appliance retailers with a list of additional qualifying models that did not get listed in the brochure (as BPA is made aware of them).

B. Procedure for Establishing Energy Efficiency Qualification Levels (EEQLs)

1. Using the January issue of the AHAM Directory for the current year, separate the models in the Directory into the following product classes:

a. *Refrigerators.*

(1) Compacts (all configurations and defrost system types with total volumes less than 8.5 cubic feet)

(2) Manual Defrost

(3) Partial-Automatic Defrost

(4) Automatic Defrost with Single Door or Top-Mounted Freezer

(5) Automatic Defrost with Top-Mounted Freezer and Thru-the-Door Ice Service

(6) Automatic Defrost with Side-Mounted Freezer (Side-by-Side)

(7) Automatic Defrost with Side-Mounted Freezer and Thru-the-Door Ice Service

(8) Automatic Defrost with Bottom-Mounted Freezer

b. *Freezers.*

(9) Upright with Manual Defrost

(10) Upright with Automatic Defrost

(11) Chest with Manual Defrost

2. For the *Compact refrigerator* product class (class 1), separate the models into the following size groups:

a. 0.0 to 4.4 cubic feet

b. 4.5 to 8.5 cubic feet

For each of the remaining *refrigerator* product classes (classes 2 through 8), separate the models into the following size groups:

a. 8.5 to 12.4 Cubic Feet

b. 12.5 to 16.4 Cubic Feet

c. 16.5 to 20.4 Cubic Feet

d. 20.5 to 24.4 Cubic Feet

e. 24.5 to 28.4 Cubic Feet

For each of the *freezer* product classes (classes 9 through 11), separate the models into the following size groups:

a. 0.0 to 7.4 cubic feet

b. 7.5 to 11.4 cubic feet

c. 11.5 to 15.4 cubic feet

d. 15.5 to 19.4 cubic feet

e. 19.5 to 23.4 cubic feet

f. 23.5 to 27.4 cubic feet

g. 27.5 to 31.4 cubic feet

(Note that although freezer size group (a) covers a wider range of sizes than the other size groups, only 3 of the 65 freezers in this size range have volumes which are less than 4.1 cubic feet.)

3. In each size group, rank order the models from highest Energy Factor (EF) to lowest EF (rounded to one decimal place). The EF is determined by the following formula, as described in the Federal Register (September 14, 1977, 42 FR 46140):

$$EF = \frac{\text{Adjusted Total Volume (cubic feet)}}{\text{Daily Electrical Consumption (kilowatt hours)}}$$

Where,

a. Total Adjusted Volume for Refrigerators is:
Fresh Food Volume + (1.63 × Freezer Volume)

b. Total Adjusted Volume for Freezer is:
1.73 × Freezer Volume

c. Daily Electrical Consumption is:

$$\frac{\text{AOC (\$/Year)}}{\text{AER (\$/kWh)} \times 365 \text{ (Days/Year)}}$$

Where,

AOC is the Annual Operating Cost (FTC Energy Guide label rating)

AER is the Average Electricity Rate Assumed to Determine AOC

For 1986, the AOC data from Column 1 of the "FTC Energy Cost in Dollars" columns in the AHAM Directory will be used. Therefore, the AER will be equal to $0.0675/kWh.

4. If a size group has no models listed, no EEQL will be established.

5. *No Significant Difference Adjustment*—If all models in a size group have EFs within 10 percent of the model in the group with the lowest EF, the EEQL will be equal to 1.1 times the lowest EF (note that while no models from this size groups in the AHAM Directory would qualify, there is an opportunity for new models coming into the market to qualify).

6. For the remaining groups (except as noted in Step 7), the EEQL will be equal to the EF of the model that is 15 percent of the way down the list (15%EF). This point on the list is determined by:

a. Multiplying the total number of models in the groups by 0.15;

b. Rounding to the nearest whole number (if the number from the previous step is less than 0.5, round to 1).

7. *Deviations from the 15%EF*—The EEQL will not be equal to the 15%EF if any of the following conditions exist:

a. More than 75 percent of the models in the group have EF's greater than or equal to the 15%EF, and the first model listed has an EF which is greater than the 15%EF.

b. More than 75 percent of the models in the group have EFs equal to the 15%EF, *and* the first model on the list also has an EF equal to the 15%EF.

c. A model with an EF greater than or equal to the 15%EF for its size group has an EnergyGuide Label rating (annual operating cost) greater than or equal to a model in a larger size group of the same product class which did not qualify for the "Energy Winner" award sticker.

If any of the above conditions exists, the EEQL will be set as follows:

50% Adjustment—If condition (a) exists, the EEQL will be equal to the 15%EF plus 0.1. The purpose of this adjustment is to avoid having more than 50 percent of the models in a size group qualify (when models with larger EFs exist in the group).

75% Adjustment—If condition (b) exists, the EEQL will be equal to the EF of the first model on the list plus 0.1. The purpose of this adjustment is to avoid having more than 75 percent of the models qualify in any size group.

Fairness Adjustment—If condition (c) exists, the 15%EF will be increased in increments of 0.1 until the condition no longer exists. The EEQL will then be equal to this value. This adjustment is used because of the philosophy that it is not "fair" to identify a model as an "energy winner" when it uses the same or more energy than all larger model that did not qualify as an "energy winner."

C. Proposed EEQLs for 1986

The following tables show the proposed Energy Efficiency Qualification Levels (EEQLs) for each product class size group for 1986 (second to last column), using the procedures proposed in section (II.B) of this notice. The last column of each table shows the number of qualifying models listed in the January 1986 edition of the AHAM Directory.

As can be seen from these tables, 168 (17 percent) of the refrigerator models and 62 (14 percent) of the freezer models in the AHAM Directory qualify for the "Energy Winner" award sticker. The total number of refrigerator and freezer models that qualify is 230 (16 percent).

PROPOSED EEQLS FOR NEW REFRIGERATORS FOR 1986 BASED ON PRODUCTS LISTED IN THE JANUARY 1986 AHAM DIRECTORY

Group No.	Type	Defrost system	Size Range (cubic feet)	No. of models in group	Group energy factors		Group EEQL	No. of qualification models
					Low	High		
1a	All	All	0.0 to 4.4	57	1.5	4.5	4.0[c]	1
1b	All	All	4.5 to 8.4	49	3.0	7.1	5.8	9
2a	All	Manual	8.5 to 12.4	42	5.4	10.1	9.6	13
2b	All	do	12.5 to 16.4	27	7.9	10.2	10.2	20
2c	All	do	16.5 to 20.4	0			None	
2d	All	do	20.5 to 24.4	0			None	
2e	All	do	24.5 to 28.4	0			None	
3a	All	Partial	8.5 to 12.4	42	4.7	6.9	6.5	7
3b	All	do	12.5 to 16.4	31	5.1	8.1	7.8	10
3c	All	do	16.5 to 20.4	0			None	
3d	All	do	20.5 to 24.4	0			None	
3e	All	do	24.5 to 28.4	0			None	
4a	SD/T	Automatic	8.5 to 12.4	26	4.3	5.9	5.9	5
4b	SD/T	do	12.5 to 16.4	137	5.1	7.9	7.1	21
4c *	SD/T	do	16.5 to 20.4	276	5.4	9.7	7.8	56
4d *	SD/T	do	20.5 to 24.4	57	6.6	8.6	8.3	10
4e	SD/T	do	24.5 to 28.4	0			None	
5a	T-DI	do	8.5 to 12.4	0			None	
5b	T-DI	do	12.5 to 16.4	0			None	
5c *	T-DI	do	16.5 to 20.4	15	6.4	6.6	7.0[a]	0
5d *	T-DI	do	20.5 to 24.4	30	6.5	7.4	7.3[b]	1
5e	T-DI	do	24.5 to 28.4	0			None	
6a	S	do	8.5 to 12.4	0			None	
6b	S	do	12.5 to 16.4	0			None	
6c *	S	do	16.5 to 20.4	64	5.2	7.6	6.5[c]	3
6d *	S	do	20.5 to 24.4	54	5.2	8.4	7.6	8
6e *	S	do	24.5 to 28.4	8	6.6	8.6	8.6	1
7a	S-DI	do	8.5 to 12.4	0			None	
7b	S-DI	do	12.5 to 16.4	0			None	
7c *	S-DI	do	16.5 to 20.4	3	5.5	5.8	6.1[a]	0
7d *	S-DI	do	20.5 to 24.4	62	5.3	6.9	7.0[c]	0
7e *	S-DI	do	24.5 to 28.4	12	6.6	8.3	8.3	2
8a	B	do	8.5 to 12.4	0			None	
8b	B	do	12.5 to 16.4	0			None	
8c	B	do	16.5 to 20.4	7	6.4	7.8	7.8	1
8d	B	do	20.5 to 24.4	0			None	
8e	B	do	24.5 to 28.4	0			None	
Total Refrigerators				999				168
9a	U	Manual	0.0 to 7.4	27	3.1	7.3	7.3	11
9b	U	do	7.5 to 11.4	24	7.8	11.2	10.4	4
9c	U	do	11.5 to 15.4	46	8.3	14.5	12.4	8
9d	U	do	15.5 to 19.4	49	9.2	16.7	15.4	7
9e	U	do	19.5 to 23.4	32	10.2	15.5	12.8[b]	4
9f	U	do	23.5 to 27.4	0			None	
9g	U	do	27.5 to 31.4	6	11.6	11.6	12.8[a]	0
10a	U	Automatic	0.0 to 7.4	0			None	
10b	U	do	7.5 to 11.4	0			None	
10c	U	do	11.5 to 15.4	4	8.9	8.9	9.8[a]	0
10d	U	do	15.5 to 19.4	40	7.3	11.7	10.6	9
10e	U	do	19.5 to 23.4	2	10.3	10.3	11.3[a]	0
10f	U	do	23.5 to 27.4	0			None	
10g	U	do	27.5 to 31.4	2	7.1	7.1	7.8[a]	0
11a	C	Manual	0.0 to 7.4	38	7.2	12.6	12.7[c]	0
11b	C	do	7.5 to 11.4	42	8.1	16.2	14.9[c]	1
11c	C	do	11.5 to 15.4	39	11.2	20.8	17.5	6
11d	C	do	15.5 to 19.4	23	12.1	22.4	18.0[c]	2
11e	C	do	19.5 to 23.4	33	13.3	24.5	21.9	6
11f	C	do	23.5 to 27.4	22	13.9	23.0	23.0	4
11g	C	do	27.5 to 31.4	1	13.9	13.9	15.3[a]	0
Total Freezers				430				62
Total Refrigerators and Freezers				1,429				230

Key for Refrigerator Table.

The number of models in these groups may not be accurate. Since the AHAM Directory does not currently identify which models have thru-the-door ice service, BPA attempted to identify these models through an informal survey. BPA will revise this table and EEQLs is better information is provided to BPA before May 22, 1986 (see Section III).

Key for Refrigerator and Freezer Tables.

—*Type (second column):*

Refrigerators—Single Door (SD), Top-Mounted Freezer (T), Side-Mounted Freezer (S), Bottom-Mounted Freezer (B), Thru-the-Door Ice Service (DI).

Freezers—Upright (U), Chest (C).

—EEQL (second to last column)—Energy Efficiency Qualification Level: a—Affected by "No Significant Difference Adjustment"; b—Affected by "50% Adjustment"; c—Affected by "Fairness Adjustment."

III. Request for Product Information from Manufacturers

The following requests for information have been approved by the Office of Management and Budget (OMB approval #1910–1200).

A. Thru-the-Door Ice Service

As described in section (II.B.) of this notice, BPA is proposing to establish separate Energy Efficiency Qualification levels (EEQLs) for refrigerator models with thru-the-door ice service (product classes 5 and 7). However, the AHAM Directory currently does not indicate which models have this feature. In order to establish the proposed EEQLs for these product classes, BPA conducted an informal survey to determine which models have thru-the-door ice service. It is possible that BPA may have incorrectly identified the models with this feature.

BPA is requesting all refrigerator manufacturers that produce models with thru-the-door ice service to send a list of model numbers to BPA by May 22, 1986.

so that BPA can revise the proposed EEQLs and correctly identify the qualifying models in the brochure. If this information is not received by BPA by May 22, 1986, BPA will assume the proposed EEQLs are appropriate. BPA will then attempt to verify that the models identified by BPA as having met the EEQLs actually have this feature. Any model which can not be verified by BPA as having this feature will not be certified as having met the EEQL for its size group.

B. Models Not Listed in the 1985 or 1986 AHAM Directories

As discussed in section (II.A.) of this notice, BPA will automatically list in its 1986 brochure all qualifying models which are listed in the January 1985, June 1985, and January 1986 editions of the AHAM Directory. BPA is planning to submit the brochure for printing by June 1, 1986.

Manufacturers with models in the market that are not listed in these editions of the AHAM Directory must notify BPA by May 22, 1986, if they want these models to be considered for inclusion in the 1986 brochure. Information received after this date will be considered for future supplements to the brochure. For a model to be included in the brochure (and its supplements) it must meet the EEQL for its product class and size group. The manufacturer must identify the appropriate product class for each model number submitted (see section (II.B.1) of this notice). The manufacturer must also certify the refrigerated volumes and annual energy cost in accordance with section (II.A.) of this notice and that the model is available for sale in the Pacific Northwest region.

IV. Availability of Documents

The following documents are available from BPA:

AHAM January 1986 Directory of Certified Refrigerators & Freezers.

Report on Market Research and Program Recommendations: BPA Regionwide Promotion of Energy-Efficient Applicances.

Issues Related to the Establishment of Energy Efficiency Qualification Levels for New Refrigerators and Freezers.

To obtain a copy of these documents, call BPA's toll-free document request line: 800–841–5867 for Oregon; 800–624–9495 for other Western States. You will reach a recorded message where you may leave your request. Please request the document by its exact title.

Issued in Portland, Oregon, on April 15, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86–9338 Filed 4–24–86; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

Proposed Consent Order With Atlantic Richfield Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of final action on proposed consent order.

SUMMARY: The Administrator of the Economic Regulatory Administration ("ERA") has determined that a proposed Consent Order between the Department of Energy ("DOE") and Atlantic Richfield Company ("ARCO") shall be made final as proposed. This Consent Order resolves ARCO's potential liability for overcharges arising out of prices charged by ARCO in sales of price-controlled crude oil which were related, or linked, to transactions involving other crude oil during the period January 1, 1973 through January 27, 1981.

ARCO will make a restitutionary payment of $313 million, plus interest from January 24, 1986, the date the Consent Order was executed by DOE. ERA will direct that these monies be deposited in a suitable account for appropriate distribution by DOE. In addition, within thirty days of the effective date of the Consent Order ARCO will pay $2 million for deposit into the Miscellaneous Receipts account of the United States Department of the Treasury as a compromise of civil penalties which DOE might have asserted pursuant to section 5 of the Emergency Petroleum Allocation Act of 1973, as amended.

The decision to make the ARCO Consent Order final was made after a full review of written comments from the public. A public hearing regarding the proposed Consent Order scheduled for March 21, 1986 was cancelled after two requests to make presentations were received but subsequently withdrawn.

FOR FURTHER INFORMATION CONTACT: Robert G. Heiss, Economic Regulatory Administration, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–6727.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 7, 1986, ERA issued a notice announcing a proposed Consent Order between DOE and ARCO which would resolve matters relating to ARCO's compliance with Federal petroleum price and allocation regulations with respect to its sales of price-controlled crude oil which were related, or linked, to transactions involving other crude oil during the period January 1, 1973 and January 28, 1981. (51 FR 5394, February 13, 1986). These matters had been expressly excluded from the Consent Order with ARCO dated January 23, 1985 ("1985 Consent Order"), which was subsequently made a final order of DOE. (50 FR 26603, June 27, 1985).

The proposed Order calls for ARCO to make $313 million (plus interest from January 24, 1986, the date of execution by DOE) in restitutionary payment and $2 million in compromise of civil penalties to discharge in full all of its obligations under the price and allocation regulations with respect to its linked, or tied-in, transactions between January 1, 1973 and January 28, 1981. The restitutionary sum would be paid to DOE for appropriate distribution. The amount paid in compromise of civil penalties which DOE might have asserted pursuant to section 5 of the Emergency Petroleum Allocation Act of 1973, as amended, would be for deposit into the Miscellaneous Receipts account of the United States Department of the Treasury.

The settlement includes the violations alleged in a Proposed Remedial Order (PRO) pending against ARCO. The PRO, as amended (50 FR 48120, November 21, 1985), charges ARCO with selling domestic price-controlled crude oil at prices in excess of those permitted by DOE regulations at 10 CFR 212.183(b), 205.202, 210.62(c), and 212.10(a) during the period March 1, 1978 through January 27, 1981. During the period of alleged violations, the total excess consideration, or premiums, alleged to have been unlawfully received by ARCO for 48,251,710 barrels of domestic price-controlled crude oil was $239,948,207.00, exclusive of interest. The interest thereon, computed through October 31, 1985, was $259,347,879.00, yielding a total of $499,296,086.00.

The February 7 notice provided in detail the basis for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement, and whether the

settlement should be made final. The notice also announced a public hearing for the purpose of receiving oral presentations on the settement. That hearing, which was scheduled for March 21, 1986, was cancelled (51 FR 9702, March 20, 1986) after two requests to make presentations were received but subsequently withdrawn.

II. Comments Received

ERA received four written comments. All four comments were considered in making the decision as to whether or not the proposed Consent Order should be made final.

The comments fall into three general subject categories. First, one of the four comments addressed DOE's legal theory set forth in the PRO and the adequacy of the settlement of that case. Second, all four comments were directed at the distribution of the restitutionary payments proposed in the ARCO settlement. Third, two comments objected to the amount of compromised civil penalty—one as too little and the other as excessive.

The one comment that addressed the adequacy of the proposed settlement amount was submitted on behalf of certain named and all other utility and surface transportation end-users of petroleum products ("end-users").

With regard to the second category, one comment, which was submitted on behalf of the Controller of California and the Attorneys General of Connecticut, Indiana and Michigan, concerned the non-specific nature of the provision of the proposed Order pertaining to distribution procedures. In addition, it proposed distribution to the states of any amounts not awarded to parties shown to have been actually injured.

Two other comments, also urging the ultimate distribution to the states of monies remaining after the payment of identifiable injured parties, were filed on behalf of the following: Arkansas, Delaware, Iowa, Louisiana, North Dakota, Pennsylvania, Rhode Island, Utah and West Virginia.

The fourth comment belonging in this category, submitted on behalf of the end-users, suggested that they should receive a portion of the distribution.

In sum, the comments falling in the second category did not question the basis of the settlement or adequacy of the settlement amount, but recommended revision of the distribution provision of the proposed Consent Order or urged that distribution be made to the states or to particular end-user groups.

The third category of comments, relating to the amount designated as compromise of civil penalties which could have been sought, were filed by the end-users and the Commonwealth of Pennsylvania. The end-users urged a greater amount and Pennsylvania urged that all $315 million be designated for restitution and none for civil penalty compromise unless DOE could "document" that civil penalty compromise was warranted.

III. Analysis of Comments

The February 7 notice solicited written comments and provided the opportunity for a public hearing to enable the ERA to receive information from the public relevant to the decision whether the proposed Consent Order should be finalized as proposed, modified, or rejected. To ensure greater public understanding of the basis for the proposed settlement, the February 7 notice provided specific information regarding ARCO's overcharge liability and the considerations that went into the government's preliminary agreement with the proposed terms. This settlement information enabled the public to knowledgeably address the areas in which questions or concerns may have existed.

The signle written comment by the end-users, which addressed the adequacy of the settlement, maintains that ERA should have used a different legal theory in its PRO, and that the use of that theory would have yielded an additional possible liability of $150 million in overcharges and interest. On that premise, the comment contends that ERA's proposed settlement, based on the allegations made in the litigation, is accordingly insufficient. ERA disagrees with both the assumption and the conclusion contained in this comment.

The end-users allege that ARCO acted in concert with its crude oil reseller trading partners in the linked transactions to cause the miscertification pf price-controlled oil. The comment concludes that the settlement sum should therefore include not only the benefits ARCO itself received but also, as a penalty for alleged "fraud" and "conspiracy," all benefits obtained by ARCO's trading partners as well as all consequential harm to the refiner-participants in the Entitlements Program, wholesalers, retailer, and end-user. The comment maintains that this measure of settlement would more appropriately approximate the treble damages available in a private action under section 210 of the Economic Stabilization Act ("ESA").

The comment is misdirected. The purpose of the proposed settlement is to resolve the regulatory violations ERA has alleged against ARCO. That the proposed settlement does not seek to recover unlawful revenues received by other persons, and that it does not exact penalties for alleged conduct beyond the scope of the matters ERA has alleged against ARCO, are not cognizable objections.[1] Furthermore, the availability of treble damages in private actions under ESA section 210 is not relevant to the assessment of the appropriateness of a settlement sum that resolves a public enforcement action for restitution pursuant to ESA section 209.

ERA believes that its assessment of the case, considering the specific facts and circumstances reflected in the PRO upon which the proposed settlement was based, was proper. Accordingly, it concludes that both the restitutionary payment of $313 million and the amount of $2 million in compromise of civil penalties, which the comment also describes as inadequate, were appropriate in the circumstances of this case.

With respect to the second category, the comment of the Controller of California and the Attorneys General of several states concerning the non-specific nature of the provision of the proposed Order pertaining to distribution procedures objects to the possibility that DOE might decide to adopt a remedial plan without following the procedures of 10 CFR 205.199 or 205.280, *et seq.* (Subpart V), or without following any other procedures which afford interested parties similar rights.

The comment submitted by the end-users contends that DOE should distribute a substantial portion of the restitutionary monies to end-users. The stated premise of the comment is that a substantial portion of the overcharges was passed through to end-users in relationship to their use of oil products. All the comments received from state authorities propose the distribution of unclaimed and unsuccessfully claimed monies to the states for use in energy-related programs and projects which would benefit all the states' citizens allegedly injured by the overcharges. In addition, the comment submitted by eight Attorneys General maintains that the allowable uses for any refunds to the states should not be limited to the five specific programs identified in section 155 of Pub. L. No. 97-377, 96 Stat. 1830, December 31, 1982 (known as "the

[1] The proposed settlement does not in any event event foreclose DOE from taking appropriate enforcement action against other persons for regulatory violations arising from the allegedly linked transactions.

Warner Amendment"), for accomplishing restitution.

Paragraph 403 of the proposed Consent Order provides that "[t]he Administrator of ERA, or his designee, shall direct that these monies be deposited in a suitable account pending DOE's determination of appropriate restitutionary distribution." ERA believes this provision should not be revised.

DOE has not yet resolved the matter of the appropriate disposition of the restitutionary payment. It recognizes that the task of tracing to specific customers the monies associated with the alleged crude oil violations in this case would be extremely difficult, if possible at all. As written, Paragraph 403 of the proposed Consent Order provides for ARCO to deposit the restitutionary payment of $313 million into the U.S. Treasury escrow account. This disposition would defer the question of the proper method of distribution until an appropriate determination can be made, but it does not finally affect the identity of the ultimate recipients of the funds. The resolution of this question, however, should not be an impediment to making the proposed Consent Order final and receiving the monies from ARCO. Indeed, the question of the most appropriate disposition of the funds has no bearing on the settlement of ARCO's alleged liability at this time. Accordingly, remedial considerations will not be further addressed in this notice.[2]

Finally, the end-users suggest that the $2 million to be paid by ARCO, in compromise of civil penalties which could have been sought, was too little, whereas the comment submitted on behalf of the Commonwealth of Pennsylvania suggest that the compromise civil penalty amount should be zero and the restitution amount increased by $2 million, unless DOE documents that the facts of the case warrant that level of civil penalty compromise. The circumstances of this case and DOE's authority concerning civil penalties amply support the Department's acceptance of $2 million in compromise of such penalties. DOE is empowered to accept a compromise of civil penalties. 10 CFR 205.203(b)(2). The potential maximum amount of civil penalties for crude oil violations is $20,000 per violation. *Id.* § 205.203(b)(1)(A). In this case, ERA had alleged that ARCO had committed violations in connection with 140 crude oil sales transactions. Accordingly, it is fully appropriate for DOE to accept a compromise of civil penalties from ARCO in the stated amount as part of the settlement of DOE's allegations. Considering the bases upon which the government could have sought civil penalties, ERA also believes that a civil penalty compromise of $2 million—the largest amount obtained in an administrative oil pricing case—is not inadequate.

For the foregoing reasons, DOE has determined that the proposed Consent Order is in the public interest and should be made final without modification.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J the proposed Consent Order between ARCO and DOE executed on January 25, 1986, is made a final order of the Department of Energy, effective the date of publication of this notice in the **Federal Register.**

Issued in Washington, DC on April 17, 1986.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 86-9337 Filed 4-24-86; 8:45 am]

BILLING CODE 6450-01-M

[2] All the comments in this category also object to the possible payment of the restitutionary amount to the Miscellaneous Receipts account of the U.S. Treasury on grounds that such a transfer does not constitute restitution within the meaning of section 209 of the ESA. For the reasons discussed above, this objection is also premature. However, in this regard, DOE notes that it previously concluded, in Ruling 1984-1 (49 FR 22063, May 25, 1984), that the remedy of refund to the treasury is within its statutory authority. *See Payne 22, Inc. v. U.S.*, 762 F.2d 91 (Em. App. 1985).

[Docket No. ERA-C&E-86-33; OFP Case No. 68011-9313-20, 21, 22-24]

Powerplant and Industrial Fuel Use; Witchita Falls Energy Investments, Inc.-JV

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Witchita Falls Energy Investments, Inc.-JV.

SUMMARY: On March 19, 1986, Witchita Falls Energy Investments, Inc.-JV (WFEI) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption based on the "lack of alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum" for a proposed gas fired powerplant to be located at CertainTeed Corporation's Fiberglass Reinforcement Plant at Witchita Falls, Texas, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before June 9, 1986. A request for a public hearing must be made within this same 45-day period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-045, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585.

Docket No. ERA-C&E-86-33 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:
Steven Mintz, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, D.C. 20585, Telephone (202) 252-9506
Steven E. Ferguson, Esq., Office of General Counsel Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: WFEI proposes to construct and operate its 80 MW powerplant at CertainTeed Corporation's Fiberglass Reinforcement Plant at Witchita Falls, Texas. The system will consist of three gas fired turbine generators, three heat recovery steam generators, one steam driven turbine generator, and ancillary equipment. The facility will generate electrical power for sale to Texas Utilities Electric Company and produce steam to be used at the adjoining CertainTeed plant.

Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify, the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in §503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under §503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under §503.9 of the regulations; and

(5) Alternative sites are not available, as required under §503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certifications discussed above), WFEI has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment.

If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the Federal Register as soon as practicable. No final action will be taken on the exemption petition until EAR's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that WFEI is entitled to the exemption requested. That determination will be based on the entire record on this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C., on April 15, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-9336 Filed 4-24-86; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (ARCO Oil & Gas Co.); Order Granting Request For Waiver

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Issued: April 22, 1986.

On February 24, 1986, ARCO Oil and Gas Company (ARCO) filed a request for waiver of the restrictions in the transitional provisions of § 284.105(a) of the regulations adopted in Order No. 436.[1] ARCO seeks the waiver to permit the transportation of gas by Natural Gas Pipeline Company (Natural) on behalf of Mississippi River Transmission Corporation (MRT) until such time as Natural is issued a certificate, pursuant to section 7 of the Natural Gas Act, authorizing the transportation of gas for MRT. On November 1, 1985, Natural filed an application for such a certificate. The application was amended on November 9, 1985 and is currently pending in Docket No. CP86-186-000. We will grant ARCO's request for waiver.

On September 4, 1985, ARCO and MRT entered into a gas purchase agreement whereby MRT agreed to purchase from ARCO gas located in offshore Texas. On July 22, 1985, MRT entered into a transportation agreement with Natural whereby Natural agreed to transport the offshore gas under Part 284 of the Commission's Regulations.

The transportation agreement specified a two-year term, commencing on the date of initial deliveries of gas. On July 22, 1985, ARCO and Natural entered into a tie-in agreement whereby ARCO agreed to construct an undersea pipeline which would connect into Natural's 16-inch pipeline in High Island Block 71 to facilitate the transportation and sale of the offshore gas to MRT.

Construction of the undersea pipeline by ARCO began on September 16, 1985. Prior to October 9, 1985, ARCO expended $2,600,000 on the construction, which was delayed due to repairs and hurricanes. The pipeline was successfully tested on November 27, 1985, but is currently shut-in as Natural has declined to transport the gas until section 7 certificate authority is received.

In *CLARCO Gas Company, Inc.*,[2] we clarified our policy concerning waivers of the restrictions in the transitional provisions of Order No. 436:

> If gas hasn't flowed by October 9, 1985 the Commission will grant a waiver from the restrictions in the transitional provisions to the extent necessary to allow the transportation to commence if the parties executed a written gas transportation to commence if the parties executed a written gas transportation agreement prior to October 9, 1985, and expended significant funds or constructed significant facilities *in reliance on that agreement*, after the agreement was executed and prior to October 9, 1985.

We find that the facts and circumstances presented by ARCO meet the CLARCO standard in that ARCO constructed significant facilities prior to October 9, 1985 in reliance on a written transportation agreement which was executed prior to October 9, 1985. Accordingly, we grant ARCO's request for waiver of the restrictions in section 284.105 to the extent necessary to permit Natural's transportation on behalf of MRT to commence for a term consistent with the provisions of section 284.105 of the Commission's Rules.

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[1] 33 FERC ¶ 61,007, 50 FR 42408 (October 18, 1985).

[2] 34 FERC ¶ 61,386 (March 28, 1986).

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9317 Filed 4-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol Marathon Oil Co.

Before Commissioners: Anthony G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

Issued: April 22, 1986.

On March 14, 1986, Marathon Oil Company (Marathon) filed a request for waiver of the restrictions in the transitional provisions of § 284.105 of the regulation adopted in Order No. 436.[1] Marathon seeks the waiver to permit the transportation of gas by ANR Pipeline Company (ANR) for Seagull Marketing Service, Inc. (Seagull) on behalf of various local distribution companies for their system supply.[2] We will grant Marathon's request for waiver.

In its request, Marathon states that Marathon, Amerada Hess Corporation (Amerada), and the Diamond Shamrock Exploration Company are the producers of gas located at the Eugene Island Block 159B platform in offshore Louisiana. On May 29, 1985, Marathon and ANR entered into a written agreement whereby Marathon agreed to reimburse ANR for a pro rata share of the cost of installing an undersea pipeline connecting ANR's offshore pipeline system to the Block 159B platform and for a pro rata share of the cost of new emission control facilities.[3] The agreement was contingent upon the producers' entering into a transportation agreement with ANR for the gas produced from the Block 159B platform.

ANR, Seagull, and Amerada entered into such a transportation agreement, dated August 29, 1985 and signed September 26, 1985, whereby ANR agreed to provide transportation service, under section 311 of the Natural Gas Policy Act, through ANR's interconnection facilities at the Eugene Island Block 159B platform in offshore Lousiana to various onshore interconnection points with other interstate pipelines [4] on behalf of the local distribution companies. The transportation agreement stipulates that the gas will be sold by the producers to Seagull, as agent for the local distribution companies.

In that the May 29, 1985 agreement was contingent upon execution of the transportation agreement, Marathon became liable for its pro rata share of the cost of the interconnection facility and the new emission facility on September 26, 1985, the date the transportation agreement was signed.

Marathon states that ANR began construction of the facilities prior to October 9, 1985. Four separate hurricanes and the resulting damage delayed completion of the connection facilities until late December 1985. Marathon states that ANR purchased the gas for its own use from late December, 1985 to mid-February, 1986, but that the gas is currently shut-in as ANR has declined to transport the gas pursuant to the contract absent a waiver of the restrictions in the transitional provision of Order No. 436.

In *CLARCO Gas Company, Inc.*, [5] we clarified our policy concerning waivers of the restrictions in the transitional provisions of Order No. 436:

> If gas hasn't flowed by October 9, 1985 the Commission will grant a waiver from the restrictions in the transitional provisions to the extent necessary to allow the transportation to commence if the parties executed a written gas transportation agreement prior to October 9, 1985, and expanded significant funds or constructed significant facilities *in reliance on that agreement*, after the agreement was executed and prior to October 9, 1985.

We find that the facts and circumstances presented by Marathon meet the *CLARCO* standard in that the parties executed a written gas transportation agreement prior to October 9, 1985 and Marathon became liable for its pro rata share of the cost of the interconnection facilities at the time the transportation contract was executed. Construction of the facilities began prior to October 9, 1985. Accordingly, we grant Marathon's request for waiver of the restrictions in § 284.105 to the extent necessary to permit ANR's transportation on behalf of the local distribution companies, as described above and in the transportation agreement, to commence.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9318 Filed 4-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-10-20-002]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 21, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on April 17, 1986, tendered for filing Substitute Twelfth Revised Sheet No. 203 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that such tariff sheet is being filed to reflect in Algonquin Gas' Rate Schedule F-2, changes in the underlying rates of Consolidated Gas Transmission Corporation ("Consolidated"), as reflected in Consolidated's March 31, 1986 filing, proposed to be effective March 1, 1986.

Algonquin Gas requests that the Commission accept Substitute Twelfth Revised Sheet No. 203 to be effective March 1, 1986 to coincide with the proposed effetive date of Consolidated's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file

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[1] 33 FERC § 61,007, 50 FR 42408 (October 18, 1985).

[2] The local distribution companies are Elizabethtown Gas Company, Pennsylvania Gas and Water Company, and Commonwealth Gas Pipeline Corporation. Seagull Marketing Services, Inc. serves as their agent.

[3] The May 29, 1985 agreement states that ANR's cost of service on the connection facilities will be approximately $800,000 for the September 15, 1985 to January 1, 1987 period. Marathon agreed to pay pipeline 37.5% of the difference between $800,000 and the actual transportation revenues received by ANR, if less than $800,000 during the 9/15/85 to 1/1/87 transport period, attributable to the connection facilities. The agreement states that the $800,000 figure will be reduced for any volumes purchased by ANR during the transport period at the rate of seven cents per MMBTu. (The $800,000 figure was reduced to approximately $760,000 as a result of gas purchases by ANR during December 1985 to mid-February 1986.) The agreement further states that Marathon will pay the lesser of 37.5% of $300,000 or 37.5% of the actual cost of new emission control facilities at ANR's Patterson Station.

[4] Columbia Gulf Transmission Company, Tennessee Gas Pipeline Company, Transcontinental Gas Pipeline Corporation, Texas Eastern Gas Pipeline Company.

[5] 34 FERC ¶ 61,386 (March 28, 1986), 51 FR 11,408.

with the Commision and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9319 Filed 4-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-12-20-000 & 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

April 21, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on April 17, 1986 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1.

Third Substitute Original Sheet No. 205 proposed to be effective December 31, 1985
Second Revised First Revised Sheet No. 205 proposed to be effective January 1, 1986
Revised Substitute Second Revised Sheet No. 205 proposed to be effective February 1, 1986
Revised Fourth Revised Sheet No. 205 proposed to be effective April 1, 1986

Algonquin Gas states that such tariff sheets is being filed pursuant to the provisions of Section 7 of its Rate Schedule F-4 to reflect in its rates, effective December 31, 1985 and in its rates filed and made effective subsequent to December 31, 1985, an increase in the Contract Adjustment Demand Rate to be charged by its pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), as set forth in Texas Eastern's March 26, 1986 filing.

Algonquin Gas request that the Commission accept the above tariff sheets to be effective as proposed.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9320 Filed 4-24-86; 8:45 am]

BILLING CODE 8717-01-M

[Project No. 7560-001 etc.]

City of Austin Electric Utility Department et al.; Availability of Environmental Assessment and Finding of No Significant Impact

April 22, 1986.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor licenses (or exemptions) listed below and has assessed the environmental impacts of the proposed developments.

Project No.	Project name	State	Water body	Nearest town	Applicant
			Exemptions		
7560-001	Longhorn Dam	TX	Colorado River	Austin	City of Austin Electric Utility Dept.
9437-000	Yellowjacket	CA	Yellowjacket Creek	Calistoga	John Neerhout, Jr.
			Licensees		
5376-001	Horseshoe Bend	ID	Payette River	Horseshoe Bend	Boise Cascade Corp.
7888-001	Comtu Falls	VT	Black River	Springfield	Comtu Falls Corp. & Comtu Associates.
9033-000	Erie Canal Lock No. 32	NY	New York State Barge Canal	Pittsford	Fallon Hydro, Inc.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commission's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environmental impact statements for these projects will not be prepared. Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9314 Filed 4-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-7-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in Gas Tariff Under Purchased Gas Adjustment Clause Provisions

April 21, 1986.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on April 15, 1986, tendered for filing the following tariff sheets:

First Revised Volume No. 1

Fifty-Sixth-A Revised Sheet No. 57
Substitute Fifty-Seventh Revised Sheet No. 57
Fifty-Seventh-A Revised Sheet No. 57
Substitute Fifty-Eighth Revised Sheet No. 57

Great Lakes states that the filing provides for a new pricing arrangement related to gas purchased from Great Lakes by Michigan Consolidated Gas Company ("Mich Con"). Under the new pricing provisions for Mich Con, the gas component of the rates consists of a monthly demand charge of $12.35 per Mcf of contract demand per month and a commodity charge of $2.15 per MMBtu for deliveries each day up to 75% of the contract quantity and a commodity charge of $2.00 per MMBtu for deliveries each day over 75% of contract quantity. For deliveries each day in excess of the daily contract quantity the gas component of the rate will be $1.95 per MMBtu.

Under the prior pricing arrangements, the gas cost component of Mich Con's rates was $4.40 per MMBtu for deliveries to partial requirement delivery points and $3.73 per MMBtu for deliveries to full requirement delivery points. The new pricing arrangements provide for monthly adjustments by the application of an index which will react to competitive prices in the markets served by Mich Con. Based on deliveries

of full contract volumes the price reduction filed herewith will result in a savings to Mich Con of approximately $48,000,000 annually.

Great Lakes is requesting effective dates of January 22, 1986 for Fifty-Sixth-A Revised Sheet No. 57, February 21, 1986 for Fifty-Seventh Revised Sheet No. 57, March 14, 1986 for Fifty-Seventy-A Revised Sheet No. 57, and May 1, 1986 for Substitute Fifty-Eighth Revised Sheet No. 57. In aid thereof, Great Lakes requests waiver of the 30-day notice requirement of the provision of § 154.38(d)(4)(iv)(a) of the Commission's Regulations so as to permit this out-of-period PGA filing to implement the foregoing substantial reduction in purchased gas cost as soon as possible.

Fifty-Sixth-A Revised Sheet No. 57 reflects the new pricing provisions and is proposed to be effective January 22, 1986 subject to obtaining all regulatory approvals without conditions. The delay in filing this Purchased Gas Adjustment is due to finalizing the precise amendments to the terms and conditions of the Gas Purchase Contracts and Three Party Agreement.

Substitute Fifty-Seventh Revised Sheet No. 57 filed herewith is required to provide for a reduction in the rates to Mich Con as filed on Fifty-Seventh Revised Sheet No. 57 filed by Great Lakes on March 5, 1986 in Docket No. TA86-5-51-000 and 001 to be effective February 21, 1986 and approved by the Commission on April 2, 1986.

Fifty-Seventh-A Revised Sheet No. 57 filed herewith reflects the reduction in the gas cost component of Mich Con's purchases in excess of contract quantity under Rate Schedule AOS-1.

Substitute Fifty-Seventh Revised Sheet No. 57 filed herewith is required to provide for a reduction in the rates to Mich Con as filed on Fifty-Seventh Revised Sheet No. 57 on March 31, 1986 in Docket No. TA86-6-51-000.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc.86-9321 Filed 4-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-27-003]

North Penn Gas Co., Proposed Changes in FERC Gas Tariff

April 21, 1986.

Take notice that North Penn Gas Company (North Penn) on April 17, 1986, tendered for filing third Substitute Eightieth Revised Sheet No. PGA-1 to its FERC Gas Tariff, First Revised Volume No. 1. The filing is proposed to be effective March 1, 1986.

The purpose of this filing is to track a change in rates filed by Consolidated Gas Transmission Corporation (Consolidated) on March 31, 1986 for effectiveness March 1, 1986.

In all other respects this filing contains the same changes as filed in North Penn's PGA Compliance filing of April 2, 1986, in the above docket.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective March 1, 1986, as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each of North Penn's jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 28, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9322 Filed 4-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER86-414-000 et al.]

Electric Rate and Corporate Regulation Filings; Pennsylvania Power Co. et al.

April 21, 1986.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power Company

[Docket No. ER86-414-000]

Take notice that on April 17, 1986 Pennsylvania Power Company ("Penn Power") pursuant to 18 CFR § 35.13 and § 35.14 tendered for filing proposed changes in its FPC Electric Service Tariffs Nos. 30, 31, 32, 33 and 34 to the Pennsylvania boroughs of New Wilmington, Wampum, Zelienople, Ellwood City and Grove City, respectively. The proposed changes would increase revenues from jurisdiction sales and service by $208,631.65 or approximately 3.75% based on the 12-month period ending February 28, 1987. This increase is composed of an increase in the state tax surcharge from 4.37% to 4.49% effective April 1, 1986 and an increase in the energy cost rate ("ECR") from .4967¢/Kwh to .6716¢/Kwh effective April 1, 1986. The effect of the change in the state tax surcharge results in an increase in test year revenues of $5,491.32 and the ECR change results in an increase of $203.140.33 in test year revenues. A language change in the ECR Tariff is also sought.

The five municipal resale customers served by Penn Power entered into settlement agreements effective as of September 1, 1984. These agreements provide that these customers will be charged applicable retail rates as may be in effect during the terms of the agreements. Changes in rates were agreed to become effective as to these resale customers simultaneously with changes approved by the Pennsylvania Public Utility Commission. These settlement agreements were approved by the Federal Energy Regulatory Commission through a Secretarial letter dated December 14, 1984 in Docket Nos. ER 77-277-007 and ER81-779-000. Waivers of certain filing requirements have been requested to implement the rate changes in accordance with the settlement agreements.

Copies of the filing were served up Penn Power's jurisdictional customers and the Pennsylvania Public Utility Commission.

Comment date: May 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

2. The Connecticut Light and Power Company et. al.

[Docket No. ER86-415-000]

Take notice that on 4/17/86, The Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule pertaining to a Northfield Mountain Purchase Agreement between The Connecticut Light and Power Company, Western Massachusetts Electric Company (WMECO) and together with CL&P, the Licensees) and Holyoke Gas & Electric Department (the Department) dated as of May 1, 1986.

CL&P states that the Purchase Agreement provides for a sale to the Department of a specified percentage of capacity and related pondage from the Licensees' Northfield Mountain Pumped Storage Hydro Electric Project (Project) together with related transmission service during the period May 1, 1986 to October 31, 1990.

CL&P requests that the Commission waive its standard period and permit the rate schedule to become effective on May 1, 1986.

CL&P states that this Agreement supercedes a prior Northfield Mountain Purchase Agreement, CL&P Rate Schedule FERC No. 306, WMECO Rate Schedule FERC No. 244. The prior Northfield Mountain Purchase Agreement terminates by its own terms on April 30, 1986.

CL&P states that the capacity charge rate for the Project is a rate determined on a cost-of-service basis for the entire Project. The monthly transmission charge is equal to one-twelfth of the average annual cost of transmission service on the transmission system of the Licensees and their affiliated Northeast Utilities companies and is determined in accordance with Schedule B to the Purchase Agreement, multiplied by the number of kilowatts of winter capability which the Department is entitled to receive pursuant to the Purchase Agreement during each month. The station service charge is equal to the average cost of oil-fired generation on the system of the Licensees for the prior month, multiplied by the Department's share of the Project's station service energy requirements.

CL&P states that the services to be provided under the Purchase Agreement are the same as services provided by the Licensees relating to a sale of capacity from the Project to North Attleborough Electric Department pursuant to a rate schedule dated as of November 30, 1983. (Rate Schedule FERC Nos. CL&P 308 and WMECO 246).

CL&P further states that the filing is in accordance with Part 35 of the Commission's Regulations.

WMECO has filed a Certificate of Concurrence in this docket.

Comment date: May 6, 1986, in accordance with Standard Paragraph E at the end of this notice.

3. EUA Power Corporation

[Docket No. EL86-33-000]

Take notice that on April 17, 1986 EUA Power Corporation ("EUA Power") filed a petition for a declaratory order seeking approval of a settlement agreement extending the terms of the settlement agreement of December 27, 1985 in Docket No. EL85-46-000 to EUA Power's purchase of an ownership share in the Seabrook nuclear generating project from Fitchburg Gas and Electric Light Company ("Fitchburg").

EUA Power is a corporation established to acquire ownership shares in the Seabrook project from utilities desiring to disengage from the project. On August 29, 1985, in Docket No. EL85-46-000, EUA Power sought a declaratory order making certain determinations in ratemaking and accounting in connection with the sale of power from an 11.27% ownership share in the project the EUA Power purposed to acquire from Bangor Hydro-Electric Company, Central Maine Power Company, Central Vermont Public Service Corporation and Maine Public Service Company. The issues in that proceeding were resolved by an uncontested settlement agreement of December 27, 1985. After its filing in Docket No. EL85-46-000, EUA Power agreed to purchase a 0.86519% share of the Seabrook project from Fitchburg. The signatories to the settlement agreement in Docket No. EL85-46-000 have executed a further settlement agreement in the present docket agreeing to extend the terms of the earlier settlement agreement to Fitchburg's share. EUA Power seeks approval of the further settlement agreement.

Comment date: May 7, 1986, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9313 Filed 4-24-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-39-004]

Wyoming Interstate Company, Ltd.; Compliance Filing

April 21, 1986.

Take notice that on April 16, 1986, Wyoming Interstate Company, Ltd. (WIC) tendered for filing Fourth Revised Sheet No. 5 to its FERC Gas Tariff, Original Volume No. 1. WIC states the sheet is filed pursuant to the Commission's order of March 17, 1986 in Docket No. RP85-39-003. The tariff sheet revises WIC's Rate Schedule I—Overrun Rate to reflect the computation of the rate based on a 100 percent load factor, rather than the actual monthly systemwide load factor. The overrun rate is applicable to overrun volumes and to Tennessee Gas Pipeline Company's interruptible transportation.

WIC indicates that copies of this filing were mailed to its customers and other entities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before April 28, 1986. (18 CFR 385.214, 385.211). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-9323 Filed 4-24-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. RF-002]

Decision and Order Granting Waiver from Refrigerator and Refrigerator-Freezer Test Procedure to White Consolidated Industries, Inc.

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of decision and order.

SUMMARY: Notice is given of the Decision and Order [Case No. RF-002] granting White Consolidated Industries, Inc., a waiver for its refrigerator-freezer model, Frigidaire Model FPCI18TDWO, equipped with an electronic defrost control from the existing U.S. Department of Energy refrigerator and refrigerator-freezer test procedure.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Statin GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9513

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, White Consolidated Industries, Inc., has been granted a waiver for its refrigerator-freezer model equipped with an electronic defrost control, permitting the company to use an alternate test method.

Issued in Washington, DC, April 8, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Dicision and Order

In the Matter of: White Consolidated Industries, Inc., Case No. RF-002

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding § 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedure or when the prescribed test procedure may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 45 FR 64108 (Sept. 26, 1980).

Pursuant to § 430.27(g), the Assistant Secretary shall publish in the **Federal Resgister** notice of each waiver granted, and any limiting conditions of each waiver.

On October 23, 1985, White Consolidated Industries, Inc. (WCI), filed a "Petition for Waiver" with the Office of Conservation and Renewable Energy of DOE in accordance with 10 CFR 430.27. At the same time WCI filed an "Application for Temporary Exception" with the Office of Hearings and Appeals (OHA) of DOE in accordance with 10 CFR § 205.125. On December 20, 1985, OHA issued a Decision and Order granting WCI partial temporary exception from the DOE refrigerator and refrigerator-freezer test procedure for its model refrigerator-freezer which uses an electronic defrost control system and which is manufactured by the firm. OHA's granting of partial temporary exception reflects WCI's request that it be allowed to use the test procedure prescribed by DOE in a waiver issued last year to another manufacturer. OHA determined that WCI, for temporary relief should use a test procedure similar, but not identical to the one requested for the WCI refrigerator-freezer, for temporary relief. OHA directed that WCI should use the long-time automatic defrost test procedures in Appendix A1 of 10 CFR Part 430 with a defrost timer run time (CT) of 12 hours. WCI had not submitted data in its petition for termporary exception to support a value of CT; therefore, OHA selected 12 hours as a reasonable appropoximation. OHA stipulated in its Decision and Order that the temporary exception relief granted shall remain in effect until the Office of Conservation and Renewable Energy of DOE issues a final Decision and Order with respect to WCI's Petition for Waiver under the authority of 10 CFR 430.27 or until the close of business on September 30, 1986, whichever occurs first.

With regard to WCI's Petition for Waiver, the Office of Conservation and Renewable Energy published the petition in the **Federal Register** and solicited comments, data, and information respecting the petition in conformance with the requirements of 10 CFR 430.27. 50 FR 51284 (December 16, 1985). Comments were received from one party, a manufacturer of refrigerators and refrigerator-freezers. These comments are discussed later in this notice.

The Office of Conservation and Renewable Energy consulted with the Federal Trade Commission on March 6, 1986, concerning the WCI petition.

Assertions and Determinations

WCI is a manufacturer of home appliances, including refrigerator-freezers. WCI has developed what it terms an "electronic defrost control system" (herein "EDC") for a model of refrigerator-freezer, Frigidaire Model FPCI18TDWO, that initiates defrost cycles in response to operating conditions and usage patters. WCI's petition requested DOE to grant WCI relief from the DOE test procedure for refrigerator and refrigerator-freezers for its EDC-equipped refrigerator-freezer model on the basis that the existing test procedure yields materially inaccurate estimates of the energy consumption of such units.

WCI stated that the EDC-equipped refrigerator-freezers initiates defrost cycles on the basis of compressor run times and the length of the preceding defrost period.

The petition states that under the conditions and procedures of the current DOE test procedure for refrigerator-freezers, the energy consumption of an EDC-equipped refrigerator will appear to be lower than a comparable timed-defrost unit. The petition explains that because the unit will defrost less frequently, less energy will be consumed during the test period, leading to test procedure results that do not represent accurately the unit's performance on a comparable basis with timed-defrost units.

Further, the petition seeks to use the alternate test procedure prescribed in DOE's Decision and Order granting Whirlpool Corporation (Whirlpool) waiver from DOE refrigerator-freezer test procedure for Whirlpool's refrigerator-freezer models equipped with electronic adaptive defrost controls. 50 FR 34186 (August 23, 1985).

Comments were received from one manufacturer of refrigerators and refrigerator-freezers, Whirlpool, in response to the publication of WCI's waiver request in the **Federal Register**. WCI submitted a rebuttal statement to DOE responding to Whirlpool's comments as provided by DOE's test procedure waiver regulations. The comments received and WCI's rebuttal to the comments are summarized below.

Whirlpool commented that it supports WCI's request for waiver on the basis that the existing DOE test procedure will not adequately test the EDC-equipped model for energy consumption, and that granting the waiver would be consistent with DOE's determination on the Whirlpool petition.

However, Whirlpool disagreed with the petition's request to use the alternate test procedure prescribed in the Whirlpool case. Whirlpool states that for its models equipped with the company's automatic defrost controls ("ADC"), the control may initiate a defrost after as little as 6 hours of compressor run time or as much as 144 hours of compressor run time, whereas, the WCI control initiates a defrost anytime between 8 and 48 hours of compressor run time. Thus, Whirlpool argues that under some conditions the WCI control would defrost as much as three times as frequently as the Whirlpool control. Whirlpool maintains that this is a strong indication that different factors than those used by Whirlpool should be used to represent the frequency of defrost in the equation used to calculate energy consumption for each basic model or each basic defrost controller. Whirlpool points out that its case for an alternate test procedure used an equation to calculate energy consumption in which the factor .33 represented the approximate frequency of defrosts for the ADC system in units of defrosts/day. Whirlpool states that while this factor was relatively accurate for its ADC system since it was based on company filed test data of the models in question, the factor .33 may not be appropriate for other adaptive defrost control systems.

In its rebuttal comments, WCI maintains that while Whirlpool implies that the factor .33 was derived from field tests of its ADC models in question, the factor was determined by DOE upon the recommendation of the National Bureau of Standards. 50 FR 34188 (August 23, 1985).

WCI states that the factor chosen by DOE to represent the defrost interval of an electronic adaptive control system should be used for all such systems regardless of manufacturer unless test data or detailed analyses clearly show differences in performance. Moreover, WCI contends that there is no basis for treating the two cases differently since neither firm has comparable field test data or any other valid basis for asserting that differences in performance exist.

Furthermore, WCI maintains that Whirlpool's petition indeed was granted without meaningful test data since DOE's August 23, 1985, Decision and Order on Whirlpool's petition stated, "Absent meaningful test data upon which to base a more refined solution, the approximation of CT at 36 hours was found to allow Whirlpool to report reasonable and comparable energy data." 50 FR 34186 (August 23, 1985).

DOE agrees with WCI that the existing DOE test procedure for refrigerators and refrigerator-freezers (Appendix A1) is not appropriate for testing its EDC-equipped refrigerator-freezer since it would not yield results reflective of the expected energy consumption of such units in actual usage and would be burdensome to conduct because of the extremely long length of each test period. DOE considers that WCI has provided sufficient evidence that it is deserving of relief from the DOE test procedure for refrigerators and refrigerator-freezers for its EDC-equipped refrigerator-freezer Frigidaire Model FPCI18TDWO.

DOE previously agreed in the case of Whirlpool's petition (Case No. RF-001) that the provisions for testing "long-time" automatic defrost refrigerator-freezers found in the existing DOE test procedure can be adapted for testing automatic or electronic defrost control-equipped refrigerator-freezer models. The primary issue in any such case is the determination of a representative time between defrost cycles.

As noted by WCI in its rebuttal comments, DOE consulted the National Bureau of Standards (NBS) regarding Whirlpool's waiver request since NBS performed all of the laboratory work associated with the development of the DOE test procedure for refrigerators and refrigerator-freezers. Based on its review of the information included in Whirlpool's petition, the comments received on the petition, and Whirlpool's rebuttal to these comments, NBS recommended that, should DOE act to order an alternate test procedure for Whirlpool's ADC-equipped refrigerator-freezer models, the alternate test should be the "long-time" automatic defrost test and the value for the typical time between defrost cycles for use in the alternate test should be three days (72 hours, 36 hours compressor run time) which equates to 0.33 cycles per day. NBS arrived at its recommended value on the basis that it credits the ADC-equipped units with 80 to 90 percent of the maximum energy reduction possible. (For this estimate the maximum energy reduction possible, i.e., 100 percent energy reduction, is defined to be the condition where a defrost operation never occurs.) DOE accepted the NBS recommendation.

With regard to WCI's comments on the use of Whirlpool's field test data, DOE did review these data, but only to determine whether they disputed the NBS recommended value for the typical time between defrost cycles. They did not. Therefore, WCI is correct in asserting that DOE's determination was not derived from Whirlpool's field test data.

With regard to WCI's EDC-equipped refrigerator-freezer, WCI has not provided any data to support a value for the time between defrost cycles. Based upon WCI's description of the EDC-equipped unit, DOE believes that it will likely defrost more frequently than an ADC model since the unit will defrost based on the "heater-on" time in the previous defrost period, whereas, the ADC considers not only "heater-on" time but other factors including door openings. DOE can only infer that this is the case without more data, including test data. Furthermore, without these data no determination can be made of typical time between defrost cycles. Conservation and Renewable Energy agrees with OHA, that without these data an approximation of this time is 24 hours. Therefore, today's Decision and Order specifies that WCI is to use an alternate test for its EDC-equipped refrigerator-freezer, Frigidaire Model FPCI18TDWO, and that the alternate test should be the "long-time" automatic defrost test and shall use a value of 12 hours for CT.

It is DOE's policy to require use of alternate test procedures in response to Petitions for Waiver for new product designs if such alternate test procedures will yield results which reasonably reflect the energy consumption and energy efficiency of such new product designs compared to the energy consumption and energy efficiency of comparable conventional products as tested under the existing test procedures. This long-standing policy was developed on the premise that it serves in the best interest of manufacturers and consumers alike: manufactures because it tends to promote competition on equal grounds and consumers because it promotes meaningful comparisons between products on the basis of their energy efficiency. In the case of WCI's EDC-

equipped refrigerator-freezer model, DOE believes the alternate test procedure provided in this Decision and Order to reasonably reflect the energy consumption and energy efficiency of this product design as described in WCI's petition. If WCI submits data indicating that a value for CT other than 12 would be more appropriate, DOE will consider revising today's Decision and Order. However, in the absence of meaningful data upon which to base a more refined solution, an approximation of CT will allow WCI to report comparable energy data for its EDC-equipped refrigerator-freezer.

It is therefore ordered that:

(1) The "Petition for Waiver," filed by White Consolidated Industries, Inc. (Case No. RF-002), is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3) and (4).

(2) Notwithstanding any contrary provisions of Appendix A1 of 10 CFR, Part 430, Subpart B, White Consolidated Industries, Inc., shall be permitted to test its Frigidaire Model FPCI18TDWO refrigerator-freezer equipped with an electronic defrost control system on the basis of the test procedure specified in 10 CFR, Part 430, with the modifications set forth below:

(i) Section 4.1.2 is modified by adding the following sentence at the end of the section:

"If the model being tested has an electronic defrost control, the provisions of section 4.1.2.2 shall apply."

(ii) Section 4.1.2.2 is added to read:

"4.1.2.2 Electronic Defrost Control. If the model being tested has an electronic defrost control system, the test time period shall consist of two parts. The first part shall be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part shall start when a defrost period is deliberately initiated during a compressor "on" cycle and shall terminate at the third turn "on" of the compressor motor after initiating the defrost period or after four hours, whichever comes first."

(iii) Section 5.1.2 is modified by adding the following sentence at the end of the section:

"For models equipped with electronic defrost controls, compartment temperatatures shall be those measured in the first part of the test period specified in section 4.1.2.2."

(iv) Section 5.2.1.3 is added to read:

"5.2.1.3 Electronic Defrost Control. The energy consumption in kilowatt-hour per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + [EP2 - (EP1 \times T2/T1)] \times 12/CT$$

where:

ET and 1440 are defined in 5.2.1.1

EP1 = energy expended in kilowatt-hours during the first part of the test

EP2 = energy expended in kilowatt-hours during the second part of the test

T1 = length of time in minutes of the first part of the test

T2 = length of time in minutes of the second part of the test

CT = 12 hours per day, the length of compressor run time between defrost cycles

(3) The waiver shall remain in effect from the date of issuance of this roder until the Department of Energy prescribes final test procedures appropriate to Frigidaire model FPCI18TDWO refrigerator-freezer models equipped with an electronic defrost control manufactured by White Consolidated Industries, Inc.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, April 8, 1986.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 86-9339 Filed 4-24-86; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51619; (FRL-3006-1)]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protective Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of fifty-one PMNs and provides a summary of each.

DATES: Close of Review Period:

P 86-839, 86-840, 86-841, 86-842, 86-843, 86-844, 86-845, 86-846, 86-847, 86-848, 86-849, and 86-850—July 2, 1986.

P 86-851, 86-852, 86-853, 86-854, 86-855, 86-856, 86-857, and 86-858—July 5, 1986.

P 86-859, 86-860, 86-861, 86-862, 86-863, 86-864, 86-865, 86-866, 86-867, 86-868, 86-869, 86-870 and 86-871—July 6, 1986.

P 86-872, 86-873, 86-874, 86-875, 86-876, 86-877, 86-878, 86-879, 86-880, 86-881, 86-882, 86-883 and 86-884—July 7, 1986.

P 86-885, 86-886, 86-887, 86-888 and 86-889—July 8, 1986.

Written comments by:

P 86-839, 86-840, 86-841, 86-842, 86-843, 86-844, 86-845, 86-846, 86-847, 86-848, 86-849 and 86-850—June 2, 1986.

P 86-851, 86-852, 86-853, 86-854, 86-855, 86-856, 86-857 and 86-858—June 5, 1986.

P 86-859, 86-860, 86-861, 86-862, 86-863, 86-864, 86-865, 86-866, 86-867, 86-868, 86-869, 86-870 and 86-871—June 6, 1986.

P 86-872, 86-873, 86-874, 86-875, 86-876, 86-877, 86-878, 86-879, 86-880, 86-881, 86-882, 86-883 and 86-884—June 7, 1986.

P 86-885, 86-886, 86-887, 86-888 and 86-889—June 8, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-51619]" and the specific PMN number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 86-839

Manufacture. NL Industries, Inc.

Chemical. ((G) Alkyd resin.

Use/Production. (G) An alkyd resin to be used in an open non-dispersive manner. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-840

Manufacture. NL Industries, Inc.
Chemical. (G) Water dispersible phenolic modified alkyd resin.
Use/Production. (G) Water dispersible phenolic modified alkyd resin to be used in an open, non-dispersive manner. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-841

Importer. Confidential.
Chemical. (G) Polyamide resin.
Use/Import. Ink additive. Import range: Confidential.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-842

Importer. Canon U.S.A., Inc.
Chemical. (G) Styrene-2-ethylhexylacrylate copolymer.
Use/Import. (G) Open, non-dispersive use. Import range: Confidential.
Toxicity Data. Acute oral:- >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-843

Manufacture. Confidential.
Chemical. (G) Substituted phenylamino substituted carbopolycycle sulfonic acid, salt.
Use/Production. (S) Industrial isolated intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal.
Environmental Release/Disposal. Disposal by navigable waterway.

P 86-844

Manufacture. Confidential.
Chemical. (G) Substituted phenylamino substituted carbopolycycle sulfonic acid, salt.
Use/Production. (G) Open non-dispersive use. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 4 workers.
Environmental Release/Disposal. Disposal by navigable waterway.

P 86-845

Manufacture. Confidential.
Chemical. (G) Substituted propionamide.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative; Skin sensitization: Non-sensitizer; BOD: Not biodegradable; Subacute 28 day test: Negative.
Exposure. Manufacture: dermal, a total of 30 workers, up to 6 hrs/da, up to 5 da/yr.
Environmental Release/Disposal. Release unknown. Disposal by publicly owned treatment works (POTW), approved landfill, Resource Conservation and Recovery Act (RCRA), Clean Air Act and Clean Water Act.

P 86-846

Manufacture. Confidential.
Chemical. Substituted propionamide.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Negative; Skin sensitization: Non-sensitizer; BOD: Not biodegradable; Subacute 28 day test: Negative.
Exposure. Manufacture: dermal, a total of 30 workers, upt to hrs/da, up to 5 da/yr.
Environmental Release/Disposal. Release unknown. Disposal by POTW, approved landfill, RCRA, Clean Air Act and Clean Water Act.

P 86-847

Importer. American Hoechst Corporation.
Chemical. (S) Benzenesulfonic acid, 5-methoxy-2-[(2-.hydroxy-1-naphthalenyl)azo], barium salt (2:1).
Use/Import. (G) Industrial pigment for printing inks. Import range: Confidential.
Toxicity Data. Acute oral: 5,000 mg/kg; Irritation: Skin—Irritant, Eye—Non-irritant; Ames test: Non-mutagenic.
Exposure. Confidential.
Environmental Release/Disposal. No release.

P 86-848

Manufacture. Coanfidential.
Chemical. (G) Pol[(disubstituted amino)aryl] alkane.
Use/Production. (G) Commercial contained use in a commercial article. Prod. range: 600-4,700kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: a total of 26 workers, up to .25 hr/da, up to 7 da/yr.
Environmental Release/Disposal. No release. Less than 14 to 85 kg/batch incinerated.

P 86-849

Manufacture. De Mille Chemical Corporation.
Chemical. (G) Vegetable oil, modified, ethoxylated and capped.
Use/Production. (S) Industrial detergent for cleaning and softening industrial heavy weight fabrics. Prod. range: 2,500-3,500 kg/yr.
Toxicity Data. Irritation: Skin—Non-irritant, Eye—Moderate.
Exposure. Manufacture: dermal, a total of 2 workers, up to 1 hr/da, up to 10 da/yr.
Environmental Release/Disposal. ½ to 266.5 kg/batch released to water. Disposal by POTW and sanitary sewer.

P 86-850

Manufacturer. Ethyl Corporation.
Chemical. (S) Eicosene.
Use/Production. (G) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-851

Importer.. Confidential.
Chemical. (G) Ethyl acetoxyalkenoate.
Use/Import. (G) Ingredient for use in consumer products highly dispersive use. Import range: 100-1,000 kg/yr.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: 2.0 g/kg Irritation: Skin—Non-irritant, Eye—Non-irritant; Ames test: Non-mutagenic; Repeated insult patch test: Negative; Photo-allergenic test; Negative.
Exposure. Use: dermal, a total of 6 workers, up to 2 hrs/da, up to 20 da/yr.
Environmental Release/Disposal. Disposal by private water treatment plant.

P 86-852

Manufacturer. AZS Corporation.
Chemical. (G) Acid terminated, water dispersible, isophthalic/terphthalic acid, polyester resin.
Use/Production. (S) Industrial textile application binder in sizing of yarn to be woven, product is usually used with starch or PVA. Prod. range: 120,000-240,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal and inhalation, a total of 6 workers, up to 6 hrs/da, up to 40 da/yr.
Environmental Release/Disposal. No release.

P 86-853

Manufacturer. Confidential.

Chemical. (G) Polyalkyleneoxyalkyl, alkyl silicone.

Use/Production. (S) Foam stabilizer for manufacture of polyurethane foam. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-854

Manufacturer. Confidential.

Chemical. (G) Alkylene polyether alkylate.

Use/Production. (S) Intermediate for manufacture of higher polymers. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by industrial waste water treatment facility.

P 86-855

Importer. Confidential.

Chemical. (G) Metal alkoxy halide.

Use/Import. (G) Site-limited, contained use. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Dermal, a total of 1 worker.

Environmental Release/Disposal. Sample negligible. Disposal by RCRA approved or incinerated.

P 86-856

Manufacturer. Rohm and Haas Company.

Chemical. (G) Functionalized acrylic polymer.

Use/Production. (G) Coatings additive in open, non-dispersive use. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Manufacture: dermal.

Environmental Release/Disposal. Release to land. Disposal by approved landfill.

P 86-857

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (S) Amine functional polyamide.

Use/Production. (S) Industrial curing agent for epoxy resins. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 6 workers, up to 50 da/yr.

Environmental Release/Disposal. 1 to 5 kg/batch released to land. Disposal by incineration or approved landfill.

P 86-858

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Polymer of triethylene tetramine, tetraethylene pentamine, monobasic fatty acid dibasic fatty acid, substituted phenol and substituted oxirane.

Use/Import. (S) Curing agent for epoxy resin coating systems adhesives, putties, sealants and jointing compounds. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing: dermal, a total of 30 workers, up to 2 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. Less than 5 kg/yr released to air and water.

P 86-859

Manufacturer. Hercules Incorporated.

Chemical. (G) Aliphatic hydrocarbon resin.

Use/Production. (S) Hot melt and pressure sensitive adhesives for industrial, commercial and consumer use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 24 workers, up to 8 hrs/da, up to 196 da/yr.

Environmental Release/Disposal. ~20 kg/day released to air. Disposal by POTW, approved landfill and burned as fuel.

P 86-860

Manufacturer. Hercules Incorporated.

Chemical. (G) Hydrocarbon resin.

Use/Production. (S) Hot melt and pressure sensitive adhesives for industrial, commercial and consumer use. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 24 workers, up to 8 hrs/da, up to 69 da/yr.

Environmental Release/Disposal. ~20 kg/day released to air with 0.5 kg/day to water. Disposal by POTW, approved landfill and burned as fuel.

P 86-861

Manufacturer. The Dow Chemical Company.

Chemical. (G) Acid terminated polyester prepolymer.

Use/Production. (S) Site-limited and industrial intermediate, Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal, a total of 12 workers.

Environmental Release/Disposal. Less than 0.1 kg/batch released to air, water and land. Disposal by POTW, incineration, approved landfill and navigable waterway.

P 86-862

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Hydrocarbon resin.

Use/Production. (S) Industrial tackifier component in production of various adhesive systems. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da.

Environmental Release/Disposal. 15 kg/day released to air with 6 to 250 kg/day to land. Disposal by approved landfill and mechanical filter system.

P 86-863

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Styrenated rosin ester.

Use/Production. (S) Industrial adhesive component (hot melt or pressure sensitive). Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 8 hrs/da.

Environmental Release/Disposal. 15 kg/batch released to air with 500 g/day to land. Disposal by approved landfill and mechanical filter system.

P 86-864

Importer. Nuodex, Inc.

Chemical. (G) Nonionically blocked p-toluenesulfonic acid.

Use/Import. (S) Industrial coatings. Import range: 30,000–150,000 kg/yr.

Toxicity Data. Acute oral: >10,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Non-mutagenic.

Exposure. Processing: dermal and ocular.

Environmental Release/Disposal. No data submitted.

P 86-865

Importer. Coates Circuit Products/USA.

Chemical. (G) Modified epoxy acrylate.

Use/Import. (S) UV curable polymer for printed circuit board production. Import range: 1,000–5,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Processing: dermal.

Environmental Release/Disposal. No data submitted.

P 86-866

Manufacturer. Confidential.

Chemical. (G) Salt of a substituted(phenylpyrazole).

Use/Production. (G) Chemical intermediate. Prod. range: 41000–8,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and use: dermal and inhalation, a total of 20 workers, up to 0.7 hr/da, up to 10 da/yr.
Environmental Release/Disposal. Less than 5 kg/batch incinerated.

P 86-867

Importer. Dow Corning Corporation.
Chemical. (S) Siloxanes and silicones, di-me, me hydrogen, reaction products with allyl glycidyl ether and polyethylene polypropylene glycol allyl methyl ether.
Use/Import. (G) Plastic additive. Prod. range; 1,500–2,500 kg/yr.
Toxicity Data. Acute oral: 5,000 mg/kg; Acute dermal: 2,000 mg/kg; Irritation: Skin—Slight, Eye—Non-irritant; Ames test: Negative.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

P 86-868

Importer. Confidential.
Chemical. (G) Dicyclohexyl alkane.
Use/Import. (G) Lubricating oil (contained use). Import range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Ames test: Not mutagenic; LC_{50} (Orange-red killifish) 48 hr: >500 mg/1.
Exposure. No data submitted.
Environmental Release/Disposal. Disposal by applicable local, state and federal regulations.

P 86-869

Importer. Confidential.
Chemical. (G) Dicyclohexyl alkane.
Use/Import. (G) Lubricating oil (contained use). Import range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Ames test: Not mutagenic; LC_{50} (Orange-red killifish) 48 hr: >500 mg/1..
Exposure. No data submitted.
Environmental Release/Disposal. Disposal by applicable local, state and federal regulations.

P 86-870

Importer. Confidential.
Chemical. (G) Alkyl—substituted decaline.
Use/Import. (G) Lubricating oil (contained use). Import range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Ames test: Not mutagenic; LC_{50} (Orange-red killifish) 48 hr: >500 mg/1.
Exposure. No data submitted.
Environmental Release/Disposal. Disposal by applicable local, state and federal regulations.

P 86-871

Importer. Confidential.
Chemical. (G) Dicyclohexyl alkane.
Use/Import. (G) Lubricating oil (contained use). Import range: Confidential.
Toxicity Data. Acute oral: 5 g/kg; Ames Test: Not mutagenic; LC_{50} (orange-red Killifish) 48 hr: >500 mg/1.
Exposure. No data submitted.
Environmental Release/Disposal. Disposal by applicable local, state and federal regulations.

P 86-872

Manufacturer. Confidential.
Chemical. (G) Perfluoroalkyl epoxide.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >5 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. Manufacture: dermal, a total of 16 workers..
Environmental Release/Disposal. Release to air and water. Disposal by waste treatment plant.

P 86-873

Manufacturer. Confidential.
Chemical. (G) Perfluoroalkyl epoxide.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.
Toxicity Data. Acute oral: >5 g/kg; Acute dermal: >2 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. Manufacture: dermal, a total of 16 workers..
Environmental Release/Disposal. Release to air and water. Disposal by waste treatment plant.

P 86-874

Manufacturer. Confidential.
Chemical. (G) Organosulfur modified EPDM.
Use/Production. (S) Polymeric age resister for polymers for industrial, commercial and consumer use. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Non-irritant.
Exposure. Manufacture: dermal, a total of 8 workers, up to 8 hrs/da, up to 250 da/yr..
Environmental Release/Disposal. Incidental to no release to land. Disposal by mechanical clean-up.

P 86-875

Manufacturer. NL Industries, Inc.
Chemical. (G) High solids oxirane/anhydride polyester resin.
Use/Production. (G) A polyester resin to be used in an open, non-dispersive manner. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-876

Manufacturer. NL Industries, Inc.
Chemical. (G) Polyester resin.
Use/Production. (G) a polyester resin to be use in an open, non-dispersive manner. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. No data submitted.

P 86-877

Importer. Tioxide America Incorporated.
Chemical. (s) Titanium complex of ethanol, isopropanol, monobutyl phosphate, and dibutyl phosphate.
Use/Import. (S) Industrial adhesion promoter and heat stabilizer for printing inks. Import range: Confidential.
Toxicity Data. Acute oral: >5.0 g/kg; Acute dermal: >2.0 g/kg; Irritation: Skin—Non-irritant, Eye—Irritant; Ames test: Non-mutagenic; Delayed contact hypersensitivity test: Negative; Cytogenetic test (invitro): Negative.
Exposure. Processing: dermal and inhalation, a total of 2 persons/shift, ½ hr/shift.
Environmental Release/Disposal. No data submitted.

P 86-878

Manufacturer. Confidential.
Chemical. (G) Polymethylene polyphenyl isocyanate polyol.
Use/Production. (S) Industrial crosslinking agent for polymethylene polyphenyl isocyanate used for potting and encapsulation application. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 6 workers, up to 4 hrs/da, up 12 da/yr.
Environmental Release/Disposal. Trace release to air with 2 kg/batch to land.

P 86-879

Manufacturer. Shell Oil Company.
Chemical. (G) Sulfonate surfactant intermediate.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-880

Manufacturer. Shell Oil Company.
Chemical. (G) Sulfonate surfactant intermediate.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 86-881

Manufacturer. Shell Oil Company.
Chemical. (G) Sulfonate surfactant intermediate.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-882

Manufacturer. Shell Oil Company.
Chemical. (G) Sulfonate surfactant intermediate.
Use/Production. (S) Site-limited chemical intermediate. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-883

Manufacturer. Shell Oil Company.
Chemical. (G) Sulfonate surfactant.
Use/Production. (S) Semi-contained. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 ml/kg; Acute dermal: 2 ml/kg; Irritation: Skin—Slight, Eye—Mild; Ames test; Non-mutagenic; Skin sensitization: Non-sensitizer.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-884

Manufacturer. Shell Oil Company.
Chemical. (G) Sulfonate surfactant.
Use/Production. (S) Semi-contained. Prod. range: Confidential.
Toxicity Data. Acute oral: 5 ml/kg; Acute dermal: 2 ml/kg; Irritation: Skin—Slight, Eye—Mild; Ames test; Non-mutagenic; Skin sensitization: Non-sensitizer.
Exposure. Confidential.
Environmental Release/Disposal. Confidential.

P 86-885

Manufacturer. Confidential.
Chemical. (G) Functionalized styrenated acrylic polymer.
Use/Production. (G) Industrial resin for products having an open use. Prod. range: 300,000-531,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal and inhalation, a total of 60 workers, up to 8 hrs/da, up to 73 da/yr.
Environmental Release/Disposal. 1 to 100 kg/batch released to land. Disposal by incineration and approved landfill.

P 86-886

Manufacturer. Colloids/North Chemical Company.
Chemical. (G) Polymer of acrylic and acrylate.
Use/Production. (S) Industrial size coating for textile. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 22 workers, up to 2 hrs/da, up to 10 da/yr.
Environmental Release/Disposal. 10 kg released to water. Disposal by POTW and chemical and biological treatment.

P 86-887

Manufacturer. Confidential.
Chemical. (G) Fluorinated telomer.
Use/Import. (G) Surfactant in chemical specialties, highly dispersive use. Import range: Confidential.
Toxicity Data. Acute oral: >5 ml/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant.
Exposure. Unknown.
Environmental Release/Disposal. No data submitted.

P 86-888

Manufacturer. Confidential.
Chemical. (G) Ester copolymer.
Use/Production. (G) Contained use. Prod. range: Confidential.
Toxicity Data. No data on the PMN substance submitted.
Exposure. Manufacture: dermal, a total of 30 workers, up to 4 hrs/da, up to 27 da/yr.
Environmental Release/Disposal. Disposal by POTW, approved landfill, RCRA, heat recovery and in-plant treatment.

P 86-889

Manufacturer. Dow Corning Corporation.
Chemical. (S) Reaction product of trimethylsiloxy silica copolymer and 1,1,2,2-tetrahydroperfluoro-1-decanol.
Use/Production. (S) Industrial to promote foaming in material for use in insulation, cushioning, sound, and energy absorption. Prod. range: 1,000-2,500 kg/yr.
Toxicity Data. Acute oral: >5,000 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Slight; Spot plate test: Negative.
Exposure. Manufacture: dermal, a total of 4 workers, up to 4 hrs/da, up to 16 da/yr.
Environmental Release/Disposal. 0.07 kg/batch released to land. Disposal by approved landfill.

Dated: April 11, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-8835 Filed 4-24-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59218; (FRL—3005—9)]

Certain Chemicals Test Marketing Exemption Applications; Coates Circuit Products/USA et al.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722. This notice, issued under section 5(h)(6) of TSCA, announces receipt of three applications for exemption, provides a summary, and requests comments on the appropriateness of granting each exemption.

DATE: Written comments by: May 12, 1986.

ADDRESS: Written comments, identified by the document control number "[OPTS-59218]" and the specific TME number should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M Street, SW, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TMEs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m.,

Monday through Friday, excluding legal holidays.

T 86–37

Close of Review Period. May 2, 1986.
Importer. Coates Circuit Products/USA.
Chemical. (G) Modified epoxy acrylate.
Use/Import. (S) Curable polymer for printed circuit board production. Import range: 1,000–5,000 kg/yr.
Toxicity Data. No data submitted.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

T 86–38

Close of Review Period. May 24, 1986.
Manufacturer. Confidential.
Chemical. Functionalized styrenated acrylic polymer.
Use Production. (G) Commercial and industrial resin for products having open use. Prod. Range: 7,000 kg (60 day test market period).
Toxicity Data. No data submitted.
Exposure. Manufacture and processing: dermal, a total of 17 workers, up to 3 hrs/da, up to 60 da/yr.
Environmental Release/Disposal. 1 to 34 kg/batch released to land. Disposal by incineration and landfill.

T 86–39

Close of Review Period. May 24, 1986.
Manufacturer. Richardson Polymer Corporation.
Chemical. (G) Acrylic copolymer.
Use Production. (g) Resin for coatings and inks. Prod. range: Confidential.
Toxicity Data. No data submitted.
Exposure. Manufacture: dermal, a total of 3 workers, up to 3 hrs/da.
Environmental Release/Disposal. No data submitted.

Dated: April 11, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–8836 Filed 4–24–86; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59761; (FRL–3005–8)]

Polyester/Polyamine Copolymer; Premanufacture Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of it.

DATE: Close of Review Period:

Y 86–117, April 29, 1986.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room E–107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 86–117

Importer. Confidential.
Chemical. (G) Polyester/polyamine copolymer.
Use/Import. (G) Dispersing agent. Import range: Confidential.
Toxicity Data. Acute oral: >5,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Mild; Ames test: Negative; Skin sensitization: Non-sensitizer.
Exposure. No data submitted.
Environmental Release/Disposal. No data submitted.

Dated: April 11, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86–8837 Filed 4–24–86; 8:45 am]

BILLING CODE 6560–50–M

[SAB–FRL–3008–1]

Science Advisory Board; Environmental Health Committee, Halogenated Organics Subcommittee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a one-day meeting of the Halogenated Organics Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on Thursday, May 15, 1986, in Room H6/215 of the Clinical Science Center of University Hospital at the University of Wisconsin; 500 Highland Avenue; Madison, WI 53792. The meeting will start at 8:30 a.m. and adjourn no later than 4:00 p.m. on the same day.

The purpose of the meeting will be to discuss a draft Addendum to the Health Assessment Document for Tetrachloroethylene (Perchloroethylene; EPA–600/8–82/005FA; External Review Draft; Updated Carcinogenicity Assessment; March, 1986). To obtain a copy of the draft document, contact the ORD Publications Center by phone at (513) 569–7562 or by mail to CERI-FRN; U.S. Environmental Protection Agency; 26 W. St. Clair Street; Cincinnati, Ohio 45268. The draft document also is available for public inspection and copying at the EPA Library; Waterside Mall; 401 M Street SW.; Washington, DC 20460. Comments on the draft document can be sent to the Project Manager for Tetrachloroethylene, Carcinogen Assessment Group (RD–689); Office of Health and Environmental Assessment; U.S. Environmental Protection Agency; 401 M Street SW., Washington, DC 20460.

The meeting will be open to the public. Any member of the public desiring to attend or to comment to the Subcommittee should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Brenda Johnson, by telephone at (202) 382–2552 or by mail to Science Advisory Board (A–10 1F); 401 M Street SW., Washington, DC 20460; no later than c.o.b. on May 12, 1986.

Dated: April 14, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86–9291 Filed 4–24–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3007–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements filed April 14, 1986 Through April 18, 1986 Pursuant to 40 CFR 1506.9

EIS No. 860154, DSuppl, CDB, CA, Oakland Chinatown Redevelopment Project, Construction, Additional Information, Grants, Alameda County, Due: June 9, 1986, Contact: Anu Raud (415) 273–3941.

EIS No. 860155, Draft, AFS, CA, San Bernadino National Forest, Land and Resource Management Plan, San Bernardino and Riverside Cos., Due: July 24, 1986, Contact: Richard Stauber (714) 383–5588. EIS No. 860156, Final, SCS, WV, Middle Grave Creek Watershed Protection and Flood Prevention Plan, Marshall County, Due: May 27, 1986, Contact: Rollin Swank (304) 291–4151.

EIS No. 860157, Draft, FHW, GA, GA–316 Extension, GA–316 to GA–10/US 78, Improvement, Gwinnett, Barrow, Oconee, and Clark Cos., Due June 17, 1986. Contact: Louis Papet (404) 347–4751.

EIS No. 860158, Draft, CDB, NY, Atlantic Terminal and Brooklyn Center Development, Construction, UDAG, Kings County, Due: June 9, 1986, Contact: Tony Mannarino (212) 619–5000.

EIS No. 860159, Draft, NPS, NY, PA, Upper Delaware Scenic and Recreational River, River Management Plan, Wayne and Pike Cos., Pennsylvania and Orange and Sullivan Cos., New York, Due: June 20, 1986, Contact: Mike Gordon (215) 597–9195.

EIS No. 860160, Final, FHW, CA, CA–1 Improvement Devil's Slide, Half Moon Bay Airport to Linda Mar Boulevard, San Mateo County, Due: May 27, 1986, Contact: David Eyres (916) 551–1314.

Amended Notices:

EIS No. 860131, Draft, COE, CO, Parachute Creek Shale Oil Program, Phase II, Expansion, Garfield County, Due: June 10, 1986, Published FR 4–11–86—Review period extended.

EIS No. 860148, Final, BLM, ID, Shoshone and Sun Valley Wilderness Study Area, Wilderness Designation, Due: May 27, 1986, Published FR 4–18–86—Review period reestablished.

EIS No. 860119, Final, SCS, LA, Mill Haven Watershed Flood Prevention and Drainage Plan, Richland and Ouachita Parishes, Due: June 2, 1986, Published FR 4–4–86—Review period established.

Dated: April 22, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86–9340 Filed 4–24–86; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3007–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 7, 1986 through April 11, 1986 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated February 7, 1986 (51 FR 4804).

Draft EIS's

ERP No. D–CDB–K89059–CA, Rating LO, San Bernardino Enterprise Zone Application, Designation and CDB Grant, CA. **SUMMARY:** EPA made no formal comments.

ERP No. D–COE–K36087–CA, Rating EC2, Santa Barbara County Streams, Flood Control Plan, Mission Creek, CA. **SUMMARY:** EPA's comments expressed the need for additional "in-kind" mitigation for riparian habitat loss and information on impacts to the possible reestablishment of steelhead runs in the Mission Creek drainage.

ERP No. D–FHW–D40217–MD, Rating EC2, MD–36 Construction, Seldom Seen Rd. to Buskirk Hollow Rd., 404 Permit, MD. **SUMMARY:** EPA expressed concern about possible ground water contamination and potential impacts on drinking water quality and quantity. EPA recommended increased monitoring and expanded discussion of alternatives and mitigation.

ERP No. D–FHW–K40152–AZ, Rating LO, Arizona Forest Highway, AZ–67 Reconstruction, Jacob Lake to Grand Canyon Nat'l Park, N. River, AZ. **SUMMARY:** EPA had no comments to offer on the draft EIS.

ERP No. D–FHW–L40150–OR, Rating EO2, Cornell Rd. Improvements, 185th Ave. to NW 242nd Ave., Right-of-Way Acquisition, 404 Permit, OR. **SUMMARY:** EPA stated that it had environmental objections to the lead agency's preferred alternative as proposed. EPA is particularly concerned with the potential for growth associated with the proposal to cause water quality degradation, loss of fish habitat, and loss of wetlands. EPA recommended that the final EIS fully disclose these potential impacts, as well as other potential impacts of concern, and evaluate possible means of avoiding or mitigating them.

ERP No. D–IBR–J35008–CO, Rating EO2, Stagecoach Reservoir Project, Construction, Upper Yampa River Valley, Yampa River, Loan, CO. **SUMMARY:** EPA's concerns primarily addressed wetland, water quality, fisheries, and aquatic life concerns. EPA expressed concerns regarding plans to create wetlands on irrigated agricultural land, and also the creation of 78 acres of waterfowl habitat should be evaluated more completely. EPA requested the final EIS address more thoroughly the eutrophication potential, its effects, and project management to achieve in-reservoir and downstream water quality objectives.

ERP No. D–SCS–G36133–LA, Rating LO, Acadia Parish Fifth Ward Watershed Protection and Flood Prevention Plan, 404 Permit, LA, **SUMMARY:** EPA has no objections to the proposed action if implemented as described, and with proper implementation of mitigation measures. EPA requested early coordination with the Corps of Engineers to clarify applicability of 404 jurisdiction.

Final EIS's

ERP No. F–COE–E36158–00, Tuscumbia River Flood Control Plan, MS and TN. **SUMMARY:** EPA's review concluded that there is no substantive difference in the level of flood protection between clearing and snagging, and the major cleanout option. To prevent channel instability, EPA recommends the cleaning and snagging alternative.

ERP No. F–COE–F32190–00, Lower Ohio River Navigation Improvements, Cumberland R. to Mississippi R., KY and IL. **SUMMARY:** EPA reviewed the final EIS and had no objections to the proposed project.

ERP No. FS–DOE–J08013–CO, Blue River-Gore Pass Substation, Portion of Hayden-Blue River, 345 kV Transmission Line, Construction, Operation, and Maintenance, Additional Transmission Capacity, CO. **SUMMARY:** EPA reviewed the final supplement EIS and has no objections to the project, assuming the mitigation measures included in the final are adopted.

Amended Notices

The following reviews should have appeared in the FR Notice published on April 18, 1986.

ERP No. D–FHW–D40216–VA, Rating EC2, VA–199 Construction, VA–5 to I–64, Section 10 and 404 Permits, Right-of-Way Acquisition, VA. **SUMMARY:** EPA identified project impacts on the areal aquifers and in increased noise levels. Further requests were made for mitigation efforts and selection of alignment A–1.

ERP No. D–FHW–F40285–MN, Rating EC2, MN Forest Highway 11 Construction, St. Louis CSAH–10 and St. Louis CR–565 in Hoyt Lakes to TH–61 in Silver Bay, 404 Permit, MN. **SUMMARY:** EPA is concerned that the wetland impacts are not adequately mitigated

and requested that documentation of wetland mitigation plans be sent to EPA as soon as they are available. EPA also requested that the final EIS include a more detailed analysis of the noise impacts to sensitive wildlife species.

ERP No. F-FHW-D40135-PA, Bayfront-Port Access Road Construction, I-79/West 12th Street to East 6th Street/East Lake Rd., 404 Permit, PA. **SUMMARY:** EPA has no objection to the project and its implementation.

ERP No. F-SFW-K64013-CA, Coachella Valley Fringe-Toed Lizard Habitat Conservation Plan, Sect. 10(A) Permit, CA. **SUMMARY:** The final EIS adequately addressed the concerns EPA made on the draft EIS.

Dated: April 22, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-9342 Filed 4-24-86; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3007-9]

Intent To Prepare a Joint Supplemental Environmental Impact Statement on the Hudson River PCB Reclamation Demonstration Project

AGENCY: U.S. Environmental Protection Agency—Region II, and New York State Department of Environmental Conservation (Joint Lead Agencies).

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement.

Purpose: In accordance with section 102(2)(c) of the National Environmental Policy Act (NEPA), the U.S. Environmental Protection Agency has identified a need to prepare a Supplemental Environmental Impact Statement on the Hudson River PCB Reclamation Demonstration Project and therefore publishes this Notice of Intent pursuant to 40 CFR 1501.7.

FOR FURTHER INFORMATION CONTACT:

Ms. Barbara Pastalove, Chief, Environmental Impacts Branch, U.S. Environmental Protection Agency, 26 Federal Plaza, Room 702, New York, New York 10278, Telephone: Commercial (212) 264-8556, FTS 8-264-8556

Mr. Bruce Bentley, Citizen Participation Specialist, New York State Department of Environmental Conservation, 50 Wolf Road, Room 507, Albany, New York 12233, Telephone: (518) 457-0849.

Summary

I. Background

The proposed Hudson River PCB Reclamation Demonstration Project would remove PCB-contaminated sediments from the upper Hudson River and dispose of those sediments in an upland containment site, utilizing federal funds authorized by Section 116 of the Clean Water Act.

A final environmental impact statement (FEIS) was published by EPA in October 1982, which evaluated various alternatives for management of PCB-contaminated sediments in the upper Hudson River. The FEIS found the dredging and upland containment project proposed by the New York State Department of Environmental Conservation (NYSDEC) to be an environmentally preferable alternative. The EPA's December 1982 Record of Decision deferred release of funding for the project pending review of project eligibility under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

In September 1983, EPA made a preliminary determination that the project, with certain limited exceptions, was not eligible for funding under CERCIA. Subsequently, on May 10, 1984, EPA entered into an Order on Consent with the State of New York and a number of private plaintiffs as part of a settlement of two lawsuits that had been brought to compel EPA to fund the project. Under the terms of the Consent Order, EPA agreed to approve a grant application from New York State if the State met certain requirements, including obtaining a suitable disposal site. NYSDEC then undertook a resurvey of contaminated river bottom sediments, and re-selection of a PCB disposal site.

II. Proposed Action

The EPA and the NYSDEC have entered into a Memorandum of Agreement as joint lead agencies to prepare a supplemental environmental impact statement (SEIS) to the October 1982 FEIS on the Hudson River PCB Reclamation Demonstration Project. This will avoid duplication of effort while enabling the EPA and the NYSDEC to fulfill their respective responsibilities under the National Environmental Policy Act (NEPA) and the State Environmental Quality Review Act (SEQRA).

III. Scope of the SEIS

The alternatives to be evaluated in the SEIS are limited by the Consent Order to changes to the alternative containment sites and disposal methods considered in the 1982 FEIS. Accordingly, the SEIS will include a thorough assessment of the proposed containment sites and associated environmental impacts, as well as an evaluation of the no-action alternative, general comparative analysis of alternative dredging and disposal methodologies, and a summary of the containment site screening process, including the proposed site.

IV. Public Participation in the SEIS Process

Full participation by interested Federal, State, and local agencies, as well as interested private organizations and citizens is invited. A full-scale public participation program will be implemented. A citizens advisory committee is in existence as part of the project review process, and public meetings and hearings and hearings will be held for the SEIS.

The next meeting to be held will be a public information meeting in the Ft. Edward/Hudson Falls Area, New York, on June 4, 1986, to discuss the issues to be addressed by the SEIS. Advance notice of the meeting location will be provided; copies of a preliminary environmental information document will be make available for public review prior to the meeting. Participation of interested parties at this meeting is invited. If you are unable to attend this meeting, you are encouraged to submit your question or comments, in writing, to the above contact(s).

V. Timing

The joint draft SEIS in scheduled to be published in July 1986, and will be available for a 60-day public review and comment period.

VI. Requests for copies of the SEIS

Interested parties are requested to submit their names and address to the contact person(s) indicated above for inclusion on the distribution list for the draft SEIS and related public notices. The draft SEIS will be available for public review at the following locations:

U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 702, New York, NY 10278

New York State Department of Environmental Protection, Hudson Street Extension, Warrensburg, NY 12885

New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233

New York State Department of Environmental Conservation, 21 South Putt Corners Road, New Paltz, NY 12561.

Dated: April 22, 1986.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 86-9341 Filed 4-24-86; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00226; FRL-3009-8]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel (SAP) to review: (1) The Agency's proposed testing battery for inert ingredients used in pesticide formulation; (2) a set of scientific issues being considered in connection with the Special Review on diazinon; (3) a set of scientific issues in connection with the Registration Standards for benomyl, thiophanate methyl, and pronamide; (4) a paper defining Maximum Tolerated Dose; (5) a paper on "Chemicals Inducing Thyroid Neoplasia"; (6) an information briefing by the Office of Drinking Water on Health Advisories for 15 pesticides; and (7) the Agency's proposed draft reporting guidelines. The meeting will be open to the public.

DATES: Wednesday and Thursday, May 21 and 22, 1986, from 8:30 a.m. to 5 p.m. each day.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. No. 3, North Conference Area, Waterside Mall Level, 401 M St. SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Stephen L. Johnson, Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766C), 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1121, Crystal Mall, Building No. 2, Arlington, VA, (703-557-7695).

SUPPLEMENTARY INFORMATION: The agenda for the meeting is:

1. Review of the Agency's proposed testing battery for inert ingredients used in pesticide formulations.

2. A set of scientific issues being considered in connection with the Special Review on diazinon.

3. A set of scientific issues being considered by the Agency in connection with the Registration Standard for benomyl.

4. A set of scientific issues being considered by the Agency in connection with the Registration Standard for thiophanate methyl.

5. A set of scientific issues being considered by the Agency in connection with the Registration Standard for pronamide.

6. Certain scientific issues dealing with defining a Maximum Tolerated Dose.

7. Review of a paper entitled "Chemicals Inducing Thyroid Neoplasia."

8. An informational briefing by the Office of Drinking Water on Health Advisories for 15 pesticides.

9. Review of 12 draft Reporting Guidelines.

10. Completion of any unfinished business from previous Panel meetings.

11. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of documents relating to item 1 above may be obtained by contacting:

By mail: Gary Burin, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 1124, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-9307).

Copies of documents relating to item 2 above may be obtained by contacting:

By mail: Ingrid Sunzenauer, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office Location and telephone number: Rm. 711B, Crystal Mall No. 2, Arlington, VA, (703-557-1529).

Copies of documents relating to items 3 and 4 above may be obtained by contacting:

By mail: Henry Jacoby, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

Copies of documents relating to item 5 above may be obtained by contacting:

By mail: Robert Taylor, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

Copies of documents relating to item 6 above may be obtained by contacting:

By mail: Jane Harris, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 714, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0303).

Copies of documents relating to item 7 above may be obtained by contacting:

By mail: Orville Paynter, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 714, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7695).

Copies of documents relating to item 8 above may be obtained by contacting:

Penelope Fenner-Crisp, Office of Drinking Water (WH-550D), Environmental Protection Agency, Rm. E-1101C, 401 M St. SW., Washington, DC 20460, (202-382-7589).

Copies of documents relating to item 9 above may be obtained by contacting:

By mail: Elizabeth Leovey, Hazard Evaluation Division (TS-769C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

Office location and telephone number: Rm. 809, Crystal Mall No. 2, Arlington, VA, (703-557-1354).

Any member of the public wishing to submit written comments should contact Stephen L. Johnson at the address or telephone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file such statements before the meeting. To the extent that time permits and upon advance notice to the Executive Secretary, interested persons may be permitted by the chairman of the Scientific Advisory Panel to present oral statements at the meeting. There is no limit on written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. Since oral statements will be permitted only as time permits, the Agency urges the public to submit written comments in lieu of oral presentations. All statements will be made part of the record and will be taken into consideration by the Panel. Persons wishing to make oral/written statements should notify the Executive Secretary and submit 10 copies of written comments and oral written testimony no later than May 7,

1986, in order to ensure appropriate consideration by the Panel.

Dated: April 21, 1986.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 68-9402 Filed 4-24-86; 8:45 am]

BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 5]

Agency Forms Submitted for OMB Review

AGENCY: Export-Import Bank of the United States.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, Eximbank has submitted a proposed collection of information to the Office of Management and Budget for Review.

Purpose: The proposed form is to be used by commercial banks participating in Eximbank's guarantee program. The collection will provide Eximbank with the information necessary to evaluate the transaction and to assure that relevant statutory programs are met.

SUMMARY: The following summarizes information collection proposal submitted to OMB:

(1) Type of request—renewal.

(2) Number of forms submitted—one, with related documents.

(3) Form number—EIB No. 73-1, with related documents.

(4) Title of information collection—Application and Supplementary Agreement to the Export-Import Bank of the United States.

(5) Frequency of Use—Upon request by a commercial bank for a guarantee of loan.

(6) Respondents—Commercial banks throughout the United States.

(7) Estimated number of responses—150.

(8) Estimated total number of hours needed to fill out form—40. Section 3504(h) of Pub. L. 96-511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed format and supporting documents may be obtained from Helene H. Wall, Agency Clearance Officer, (202) 566-8111, Attention: Analysis. Comments and questions should be directed to (OMB) Francine Picoult, (202) 395-7231.

Dated: April 8, 1986.

Helene H. Wall,

Administrative Officer.

[FR Doc. 86-9293 Filed 4-24-86; 8:45 am]

BILLING CODE 6690-01-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket 85-166, Phase II, Part 1]

Common Carrier Services; Investigation of Special Access Tariffs of Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final Order.

SUMMARY: Based upon data accumulated in the Commission's on-going investigation of local exchange carrier (LEC) special access tariffs, the Common Carrier Bureau has (1) ordered a limited extension of a Commission-prescribed transition plan in the special access category which provides certain interexchange carriers with a discount on special access rates; (2) ordered certain LECs to either justify currently effective special access rate levels or reduce such levels; (3) directed two LECs to show cause as to why they should not immediately refund excessive earnings accumulated during the period from April through September of 1985; and (4) terminated the rate level portion of the special access investigation with regard to certain LECs.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wack, Tariff Division, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Memorandum Opinion and Order, CC Docket 85-166, Phase II, Part 1, Mimeo No. 3436, adopted March 26, 1986, and released March 27, 1986.

The full texts of Commission decisions are available for public inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of these decisions may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

In March 1985, the Commission prescribed a one-year transition plan in order to moderate proposed increases in rates for special access lines provided by the Bell Operating Companies (BOCs) to certain other common carriers (OCCs).[1] Pursuant to this plan, which covers lines in place as of November 8, 1984, the OCCs received a 50 percent discount on the tariffed rate during the first six months special access rates were in effect (generally, from April through September of 1985) and a 25 percent discount on the tariffed rate during the next six months. The OCCs were scheduled to begin paying full rates for these lines as of April 1, 1986. During the period in which the transition plan has been in effect, the Commission has also been examining a variety of issues related to local exchange carrier special access tariffs, including the reasonableness of rate levels,[2] as part of the instant investigation (*Docket 85-166*). Congress has urged the Commission to complete the investigation before the April 1 rate equalization step occurred.[3]

Based upon its analysis of rate of return data submitted by the BOCs in the *Docket 85-166* investigation, the Bureau concluded that, averaged industry-wide, BOC special access rates would not become unreasonable if the April 1 rate equalization step occurred as scheduled. In certain states, however, the Bureau concluded that implementation of rate equalization appeared likely to result in unreasonably high rates for all customers. Therefore, the Bureau temporarily extended the transition plan until June 1, 1986 in such states.[4] During this period, BOCs providing special access service in these states will have an opportunity to justify the apparently excessive rates or to file tariff revisions reducing such rates.[5] Upon the effective date of the revisions, the transition discount will be eliminated and the revised rates will apply to all special access customers.

The Bureau also directed Northwestern Bell and Pacific Northwest Bell to refund special access

[1] *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I and Phase II, Part 1, FCC 85-100, 50 FR 11440 (Mar. 21, 1985) (*March 8 Order*).

[2] *See* Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket 85-166, Phase II, Part 1, released Jan. 17, 1986 (*Data Request Order*) (Common Carrier Bureau requested information and established a procedural schedule for the investigation of BOC special access rate levels). The BOCs responded to the requirements of the *Data Request Order* by filing information with the Commission on February 14, 1986.

[3] H.R. Rep. No. 99-414, 99th Cong., 1st Sess., at 38 (Dec. 4, 1985).

[4] The states in question are: Michigan, Ohio, Indiana, Virginia, Delaware, New Jersey, Iowa, Minnesota, Nebraska, North Dakota, Idaho, New Mexico, Kansas, Oklahoma and Texas.

[5] The carriers in question are: Michigan Bell, Ohio Bell, Indiana Bell, Northwestern Bell, Pacific Northwest Bell, Mountain Bell, Southwestern Bell, and the Chesapeake and Potomac Telephone Companies of Virginia, Delaware and New Jersey.

rates in four states or show cause why they should not be ordered to do so. The refunds are to correct excessive rates in Idaho, Nebraska, South Dakota and Washington during the period from April through September 1985.

Finally, the Bureau terminated the rate level portion of the *Docket 85–166* investigation with regard to certain BOCs whose special access rates of return indicate that their underlying rate levels are not unreasonable.[6]

Ordering Clauses

Therefore, it is ordered that the transition plan described by the Commission in the *March 8 Order* is modified by extending it until June 1, 1986 in the states listed in footnote 4 of this summary. Tariff revisions reflecting this extension should be filed by such carriers on not less than one day's notice to be effective April 1, 1986. For this purpose, we waive §§ 61.56 and 61.58 of the Commission's rules, 47 CFR 61.56, 61.58, and assign Special Permission No. 86–208.

It Is Further Ordered, that carriers identified in footnote 5 of this summary are directed to file with this Commission no later than May 1, 1986 either (1) justification for their currently effective special access rates including, but not limited to, information as to actual rates of return in the special access category for the period between October 1, 1985 and the present; or (2) tariff revisions reducing their special access rates in a manner calculated to lower their rates of return to authorized levels.

It Is Further Ordered, that the Northwestern Bell Telephone Company and the Pacific Northwest Bell Telephone Company are hereby ordered to refund excessive earnings on special access services provided during the period from April through September of 1985, and to report to this Commission no later than May 1, 1986 as to the method and schedule by which such refund is being implemented, or to show why such refund is not being implemented.

It Is Further Ordered, that the portion of the instant investigation directed at the special access rate levels of local exchange carriers, and no other portion, is hereby terminated as to the carriers listed in footnote 6 of this summary.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–9130 Filed 4–24–86; 8:45 am]

BILLING CODE 6712-01-M

[6] The affected BOCs are (where appropriate, this list indicates that the investigation is terminated only as to a carrier's operations in certain of its operating territories): the Chesapeake and Potomac Telephone Companies of West Virginia and the District of Columbia; Pennsylvania Bell; Northwestern Bell (South Dakota); Pacific Northwest Bell (Oregon, Washington); Mountain Bell (Arizona, Idaho, Montana, Utah); Southern Bell (Florida, Georgia, North Carolina, South Carolina); the New York Telephone and Telegraph Company; the New England Telephone and Telegraph Company, the Southern New England Telephone Company and Southwestern Bell (Arkansas).

[CC Docket No. 85–166, Phase I; FCC 86–52]

Common Carrier Services; Investigation of Special Access Tariffs of Local Exchange Carriers.

AGENCY: Federal Communications Commission.

ACTION: Final order.

SUMMARY: The Commission has resolved a number of rate structure and cost allocation issues related to the special access tariffs of local exchange carriers.

EFFECTIVE DATE: January 24, 1986.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wack, Tariff Division, Common Carrier Bureau, (202) 632–6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, CC Docket 85–166, Phase I, adopted January 21, 1986, and released January 24, 1986.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW, Suite 140, Washington, DC 20037.

A. Rate Structure Issues

1. Multipoint Service vs. Point-to-Point Service.

The Commission concluded that the special access rate structure adopted by the National Exchange Carrier Association (NECA) and most major local exchange carriers (LECs) including the Bell Operating Companies (BOCs), as it is applied to multipoint and point-to-point services, is reasonable. The Commission determined that pricing difference between comparable network configurations are rationally related to the cost of providing each service, and that the structure leaves to the customer the decision as to when it is economically reasonable to select one type of service or the other. The Commission rejected a request to require LECs to install multipoint service bridging capability in every serving wire center because such action would result in overcapacity and higher rates for all users. Finally, the Commisssion rescinded its requirement [1] that multipoint service bridging rates be calculated on a per port basis.

2. Video Services

The Commission concluded that the actual routing and cost characteristics of video and voice services are so similar that the application of the special access rate structure to both services is just and reasonable. The Commission further determined that the LECs' video rates reflect investment in certain amounts of polyethylene shielded video (PSV) cable and related plant that currently is not used to provide video service. Therefore, it disallowed 50 percent of the unassigned PSV then allocated by the LECs to the video service category.

3. Shared Network Facility Agreements (SNFAs)

SNFAs are a collection of contracts implementing provisions of a consent decree between the United States Department of Justice and the American Telephone and Telegraph Company (AT&T) pursuant to which AT&T was required, *inter alia,* to divest certain BOCs.[2] The District Court with jurisdiction over the decree concluded that it was necessary for AT&T and the divested BOCs temporarily to continue sharing certain facilities: *i.e.,* although ownership of the facilities would be assigned either to AT&T or to the individual BOC according to whose use predominated, the other party would retain a contractual right to their use.[3] The terms and conditions of such use are contained in SNFAs. The Commission concluded that the contemporaneous existence of SNFAs and special access does not constitute unreasonable discrimination under the Communications Act because the temporary sharing of multifunctioning facilities pursuant to SNFAs furthers the public interest. This conclusion, the Commission noted, mooted requests that it order AT&T and the BOCs to file copies of all SNFAs with the Commission.

[1] *See* Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Phase I and Phase II, Part 1, 50 FR. 1263 (Mar. 29, 1985).

[2] *See* United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982) (Modification of Final Judgment or MFJ), *Aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[3] MFJ at 206–07, 227.

B. Cost Allocation Issues

The Order designating issues for investigation in the present proceeding noted that the LECs' allocation of certain costs among various special access rate elements warranted close examination.[4] In general, two types of costs allocation questions arose: (1) Whether certain special access costs should be allocated to the channel mileage or the channel termination rate element (the former generally is associated with trunk costs and the latter with loop costs); and (2) whether certain costs should be unbundled and recovered either in a separate rate element or on a customer-specific basis.

1. Station Apparatus and Large Private Branch Exchanges (PBXs)

In accordance with §§ 31.231 and 31.234 of the Commission's rules, 47 CFR 31.231, 31.234, LECs have established separate accounts which reflect the original cost of station apparatus (Account 231) and large PBXs (Account 234) in their inventories. The Commission concluded that (1) certain equipment associated with Accounts 231 and 234, although located on customers' premises, is properly subject to tariffing procedures; (2) the equipment in these accounts is used to provide a particular kind of service to customers and, therefore, the LECs' investment in such equipment should be recovered from all customers to whom the service is provided, even though not every type of equipment in the collection is used to provide service to every customer; and (3) the investment in question is properly allocated to the channel terminated rate element because the equipment is used to establish a transmission path between the customer and the wire center serving that customer.

2. Digital Interexchange Facilities

The Commission determined that a portion of the cost associated with digital interexchange facilities is allocated properly to the channel termination rate element because the service, which is provided on an end-to-end basis, includes loop facilities.

3. Private Line Switching Services Costs

The Commission determined that the investment at issue here represents capacity in BOC-owned multifunctioning equipment which is available for lease by AT&T but which is not currently under lease. Against this background, the Commission concluded that such investment was not available to the public at large for the provision of special access services and should not be included in any special access rate element. Therefore, the Commission ordered the BOCs in question to remove such investment from their special access revenue requirement.

4. Voice Grade Performance

The Commission determined that voice grade performance equipment is used to provide continuity on loop circuits and, therefore, is properly associated with the channel termination rate element. Moreover, the Commission noted, it would be unwarranted to unbundle such equipment costs from channel termination rates because the equipment itself is not useful to customers on a stand-alone basis.

5. Hybrid Option

The Commission rejected requests that the costs associated with equipment used to connect a four-wire special access line to a two-wire termination be unbundled from channel termination rates. The Commission noted that the decision to use such equipment depends more upon conditions in a carrier's inventory than upon a specific customer's facilities. The Commission concluded, therefore, that the option of using such facilities should remain with carriers in order to allow them to apply their facilities in the most efficient manner.

6. Facility Interface (FACIF) Grade Performance

The Commission determined that the allocation of FACIF costs in LEC special access tariffs is reasonable. The Commission noted that the LECs have bundled such costs into channel termination rates on a service-by-service basis, an allocation methodology calculated to ensure that customers who are provided with a particular service are charged a rate reflecting the average cost of such service, no more and no less.

7. 2-Wire vs. 4-Wire Channel Termination Rates

The Commission determined that relationship between 2-wire and 4-wire channel termination rates unduly prejudiced 2-wire users and ran counter to common understanding of proper rate relationships. The Commission concluded that a 1-to-1.6 ratio represents a reasonable rate relationship between 2-wire and 4-wire channel termination rates and it directed carriers to adjust their rates accordingly.

C. Information Request

The Commission directed local exchange carriers whose special access tariffs include non-recurring charges (NRCs) to file with the Commission certain information on the costs underlying such charges. The Commission also directed these carriers to file pleadings addressing certain NRC issues, including (1) the potential market effects of changing the allocation of costs between recurring and non-recurring charges, (2) whether the Commission should require a phase-in transition to higher NRC rates; and (3) the relationship, if any, between actual costs for the period from April 1, 1985 through September 1985 and the rate increases proposed by the LECs in the July 2, 1985 filings, which took effect on October 1, 1985.

Ordering Clauses

Accordingly, It Is Ordered, pursuant to section 205(a) of the Communications Act, 47 U.S.C. 205(a), that the requirement that local exchange carriers charge for bridging services on a "per port" basis is hereby rescinded.

It Is Further Ordered, pursuant to sections 201(b) and 204 of the Communications Act 47 U.S.C. 201(b), 204, that 50 percent of the revenue requirement associated with unassigned PSV cable allocated by local exchange carriers to the video service category is hereby disallowed.

It Is Further Ordered, pursuant to sections 201(b) and 204 of the Communications Act 47 U.S.C. 201(b), 204, that local exchange carriers are directed to remove from the special access revenue requirement the investment discussed *supra* relating to private line switching services.

It Is Further Ordered, pursuant to sections 201(b), 204 and 205 of the Communications Act 47 U.S.C. 201(b), 204–205, that a relationship of 1.6-to-1 between 4-wire and 2-wire channel termination rates for major voice and sub-voice grade special access categories is hereby prescribed.

It Is Further Ordered, pursuant to sections 4(i), 4(j) and 203(a)–(b) of the Communications Act 47 U.S.C. 154(i)–(j), 203(a)–(b), that carriers shall file revised tariff material in compliance with this Order no later than 30 days from the date of its release, to become effective upon one day's notice.

It Is Further Ordered, pursuant to sections 201, 204, 218 and 403 of the Communications Act 47 U.S.C. 201, 204, 218 and 403 that carriers are directed to file with this Commission information

[4] Investigation of Special Access Tariffs of Local Exchange Carriers, CC Docket No. 85–166, Mimeo No. 4726, released May 24, 1985.

relating to non-recurring charges according to the terms of this Order.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-9139 Filed 4-24-86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S. 3501, et. seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Wm. Jarrel Smith, Jr., Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, D.C. 20573, telephone number (202) 523-5866. Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR 566—Shippers' Requests and Complaints Under the Shipping Act, 1916

FMC requests extension of clearance for regulations which require conferences and other ratemaking bodies in the domestic offshore trades to file annual reports detailing shippers' requests and complaints received during the preceding calendar year and the disposition of such. Resident representatives must maintain records for two years. Total estimated annual burden for 2 conferences and ratemaking bodies is 24 man-hours. Total estimated annual cost to the Federal Government is approximately $100; total estimated annual cost to respondents is approximately $450.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86-9250 Filed 4-24-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Coastal Commerce Bankshares, Inc. et al.; Formations of ; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 19, 1986.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Coastal Commerce Bankshares, Inc.*, Kaplan, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Kaplan State Bank, Kaplan, Louisiana.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *DG Bancorp, Inc.*, Downers Grove, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Downers Grove National Bank, Downers Grove, Illinois.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Crown Park Bancshares, Inc.*, Lubbock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Western National Bank, Lubbock, Texas. Comments on this application must be received not later than May 16, 1986.

Board of Governors of the Federal Reserve System, April 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9255 Filed 4-24-86; 8:45 am]

BILLING CODE 6210-01-M

Southern National Corp., et al.; Applications To Engage de Novo in, Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 15, 1986.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern National Corporation*, Lumberton, North Carolina; to engage de novo through its subsidiary Unified Investors Life Insurance Company,

Phoenix, Arizona, in underwriting, as reinsurer, credit life and credit disability insurance directly related to extensions of credit in South Carolina by its affiliate, Southern National Bank of South Carolina, Loris, South Carolina, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *PSB Financial Corporation*, Many, Louisiana; to engage directly in the activity of originating, acquiring, selling, and servicing mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9256 Filed 4-24-86; 8:45 am]

BILLING CODE 6210-01-M

Zions Utah Bancorporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 1986.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Zions Utah Bancorporation*, Salt Lake City, Utah; to acquire Century Mortgage Company, Salt Lake City, Utah, and thereby engage in mortgage banking activities, pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 21, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9257 Filed 4-24-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Line of Business Reports Program; Revision of Confidentiality Rules and Procedures

Correction

In FR Doc. 86-8349 beginning on page 12743 in the issue of Tuesday, April 15, 1986, make the following corrections:

1. On page 12743, second column, first and second lines, "("LB" data)" should read "("LB data")". In the first complete paragraph, eighth line, "custodial certificates" should read "custodian certifies".

2. On the same page, third column, first complete paragraph, sixth line, insert "with" between "work" and "LB".

3. On page 12744, second column, third complete paragraph, sixth line, "authorized by the" should read "with any".

4. On the same page, third column, last paragraph, second line, "Economic" should read "Economics".

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on April 18, 1986.

Social Security Administration

(Call Reports Clearance Officer on 301-594-5706 for copies of packages)

Subject: Disability Hearing Officer's Report of Disability Hearing—Existing Collection.

Respondents: State or local governments.

OMB Desk Officer: Judy A. McIntosh.

Subject: July 1986 Grantee Survey of Low-Income Home Energy Assistance Program—Revision—(0960-0330).

Respondents: State or local governments; Non-profit institutions.

OMB Desk Officer: Fay S. Iudicello.

Public Health Service

(Call Reports Clearance Officer on 202-245-2100 for copies of packages)

Food and Drug Administration

Subject: Food Standards; Application for Temporary Marketing Permits—Existing Collection—(0910-0133).

Respondents: Businesses or other for-profit institutions.

National Institutes of Health

Subject: NIH Medical Staff Fellowship Program Application—Extension—(0925-0006).

Respondents: Individuals or households.

OMB Desk Officer: Bruce Artim.

Health Care Financing Administration

(Call Reports Clearance Officer on 301-594-8650 for copies of packages)

Subject: Evaluation of Intermediary-at-Risk Demonstration—Preclearance—NEW.

Respondents: Individuals, providers.

Subject: Information Collection Requirements in Part 11, Chapter VI of the State Medicaid Manual on the Claims Processing Assessment System—Revision—HCFA-R-91, RCFA-331, and HCFA-503—(0938-0438).

Subject: Information Collection Requirements in BERC-240-F, Recognition of State Reimbursement Control System—HCFA-R-49—NEW.

Respondents: State or local governments; Small businesses or organizations.

OMB Desk Officer: Fay S. Iudicello.

Office of Human Development Services

Subject: Head Start Cost Analysis Instrument—NEW.

Respondents: State or local governments; non-profit institutions.

Subject: State Grants for Dependent Care Planning and Development—NEW.

Respondents: States.

OMB Desk Officer: Fay S. Iudicello.

Copies of the above information collection clearance packages can be obtained by calling the Reports Clearance Officer on the number shown above.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. ATTN: (name of OMB Desk Officer)

Agency Forms Withdrawn from the Office of Management and Budget Clearance Process.

The Department of Health and Human Services has withdrawn the following information collection package previously submitted to OMB for approval under the Paperwork Reduction Act.

Public Health Service

Subject: Inventory of Union Records Systems—NEW.

Reference: Federal Register/Volume 51/Page 13291, Friday, April 18, 1986.

Dated: April 21, 1986

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 86-9276 Filed 4-24-86; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 86E-0073]

Determination of Regulatory Review Period for Purposes of Patent Extension; Femstat

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Femstat and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims this human drug product.

ADDRESS: Written comments and petitions should be directed to the Dockets Management Branch (HFA.305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James C. Shehan, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under that act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Femstat, available in cream and vaginal suppository forms for use against fungal and bacterial vaginal infections. Following FDA's approval, Syntex (U.S.A.) Inc. filed a patent term restoration application with the U.S. Patent and Trademark Office, which then requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated March 13, 1986, FDA advised the Patent Office that the product had undergone a regulatory review period and that Femstat represented the first commercial marketing or use of its active ingredient, butoconazole nitrate. Shortly thereafter, the Patent Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Femstat is 2,548 days. Of this time, 1,875 days occurred during the testing phase of the regulatory review period, while 673 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* December 6, 1978. FDA has verified that the investigational new drug application became effective on December 6, 1978 (30 days after its receipt by the agency; see 21 CFR 312.1(b)(4)).

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* January 23, 1984. FDA has verified that the first of two new drug applications (one for each dosage form) was initially submitted on January 23, 1984.

3. *The date the application was approved:* November 25, 1985. FDA has verified that NDA 19-215 and NDA 19-359 were both approved on November 25, 1985.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 24, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 22, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 21, 1986.

Allen B. Duncan,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 86-9266 Filed 4-22-86; 11:56 am]

BILLING CODE 4160-01-M

[Docket No. 81D-0148]

Defect Action Levels for Canned Tomato Products; Availability of Guide

Correction

In FR Doc. 86-7950 beginning on page 12394 in the issue of Thursday, April 10, 1986, make the following correction on page 12935:

In the first column, in **FOR FURTHER INFORMATION CONTACT,** second line, the information in the parenthesis should read "(HFF-312)".

BILLING CODE 1505-01-M

Public Health Service

Announcement of Availability of Grants for General Family Planning Training Projects

AGENCY: Office of Family Planning, PHS.

ACTION: Notice.

SUMMARY: This is to announce the availability of grant funds for the General Family Planning Training Grants Program for the following regions: II, VI, and X. Applications for public and private nonprofit entities are now being accepted for grant awards under section 1003(a) of the Public Health Service (PHS) Act [42 U.S.C. 300a-1(a)] as implemented by regulations at 42 CFR Part 59 to provide training for personnel to carry out family planning service programs described in section 1001 of the PHS Act (42 U.S.C. 300).

The Office of Family Planning (OFP) which administers Title X of the Public Health Service Act, a major source of Federal funding for voluntary family planning services in this country, provides funds for a general training center in each of the ten HHS regions oriented toward the provision of skill-based knowledge for personnel that will enable the Title X program to improve its delivery of family planning services to low-income women and other clients in need of such services but otherwise unable to afford them.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Population Affairs, Room 736E, H.H.H. Building, 200 Independence Avenue, SW., Washington, DC 20201.

DATE: Applications must be postmarked or received at the above address no later than close of business June 24, 1986. Applications not meeting this requirement will not be accepted for review.

FOR FURTHER INFORMATION CONTACT: Grants Management Office at area code 202/245-0146 or Program Office at area code 202/245-0151. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for all family planning personnel. (Catalog of Federal Assistance Number 13.260). This notice announces the availability of approximately $600,000 in funding for three general training projects described below. Grants will be made to public and/or private nonprofit organizations to assist in the establishment and operation of projects which will promote the purposes of section 1003 of the PHS Act, taking into account the degree to which the project meets the requirements of the regulations (42 CFR 59.205 and 59.206). Applications are invited for the following three grants:

One general training grant for Department of Health and Human Services (DHHS) Region II (New Jersey, New York, Puerto Rico and Virgin Islands). A funding range of $230,000-$260,000 is under consideration for this grant.

One general training grant for DHHS Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas). A funding range of $220,000-$250,000 is under consideration for this grant.

One general training grant for DHHS Region X (Alaska, Idaho, Oregon, and Washington). A funding range of $125,000-$140,000 is under consideration for this grant.

Proposals must focus at least fifty percent of the training effort in the national training priority areas: (1) Family involvement, (2) program management, (3) clinic management, (4) infertility, (5) counseling and client education, and (6) natural family planning. [Natural Family Planning includes various methods and techniques which teach fertility awareness. Natural family planning does not include methods which combine fertility awareness with the use of another contraceptive method as a backup.]

Grants may be approved for project periods of up to five years. Priority will be given to those which do not exceed three years and to those projects that focus on training needs of personel in rural and underserved areas. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, and adequate stewardship of Federal funds, and availability of funds. We summarize below the statutory and regulatory background of the grant program and describe the procedures for applying for grants pursuant to this notice.

Statutory and Regulatory Background

Title X of the Public Health Service Act, enacted by Pub. L. 91-572, authorizes grants for projects to provide family planning services to low-income persons and others. Section 1001 of the Act (as amended by Pub. L. 94-63 and 95-613) authorizes grants "to assist in the establishment and operation of family planning projects which offer a broad range of acceptable and effective family planning methods, including natural family planning methods, infertility services, and services to adolescents". Section 1003 of the Act, as amended, authorizes the Secretary to make grants to "entities and individuals to provide the training for personnel to carry out the family planning serices programs described in section 1001 . . .".

Prospective applicants and grantees should refer to the regulations in their entirety. The regulations set out at 42 CFR, Part 59, Subpart C, govern grants for family planning service training.

Under the regulations, "training" means job-specific skill development, the purpose of which is to promote and improve the delivery of family planning services. See 42 CFR 59.202(e). The training does not have to be structured or always provided in formal classroom settings. In-service education, staff development, and continuing education activities that are innovative or non-traditional are encouraged, as well as the development of self-paced, self-instructional or mediated training materials which utilize technological advancements in the learning field.

Training grants may be made to eligible applicants for the purpose of providing programs, not to exceed three months in duration, for training family planning or other health service delivery personnel in skills, knowledge, and attitudes necessary for the effective delivery of family planning services. The Secretary may in particular cases approve support of a program where duration is longer than three months

when the Secretary determines (1) that such program is consistent with the purposes of this subpart and (2) that the program's objectives cannot be accomplished within three months because of the unusually complex or specialized nature of the training to be undertaken.

Application Requirements

Applications must be submitted on the forms supplied (SF–424) and in the manner prescribed in the application kits available from the Office of Grants Management. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All accepted applications will be subjected to a competitive review and assessment by a committee composed of qualified persons. The results of this review will assist the Deputy Assistant Secretary for Population Affairs in considering competing applications and in making the final funding decisions.

Any public or private nonprofit organization or agency is eligible to apply for a grant. However, as specified in the above Summary, only entities proposing to serve Regions II, VI and X will be eligible to apply under this announcement.

A copy of the legislation and regulations governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation to guide them in developing their applications. Awards will be made only to those applicants who have met all applicable requirements.

Grant Award

In determining which applications will best promote the statutory purposes, eligible competing grant applications will be reviewed and assessed against the following criteria:

1. The applicant's provision for the requirements set forth in regulation at 42 CFR Part 59.205 (10 points).

2. The capacity of the proposed applicant organization and staff to provide the appropriate services and to evaluate the results (15 points).

3. The applicant's presentation of the project's objectives, the methods for achieving project objectives, and the results or benefits expected (25 points).

4. The applicant's documentation of the innovativeness of the program approach, its worth for testing and replication (25 points).

5. The reasonableness of the estimated cost of the project to the government considering the anticipated results. (5 points).

6. The degree which the applicant's evaluation methodology indicates an understanding of program evaluation methods and of a practical, technically sound approach to assessing the project's achievement of program objectives. The extent and nature of the involvement of Title X service providers and the regional office in the evaluation effort should be made clear (20 points).

In making grant award decisions the Deputy Assistant Secretary for Population Affairs (DASPA) will take into consideration such factors as the following:

1. The national training priority areas.

2. The service providers' commitment to and involvement in the planning and implementation of the training project.

3. The type of organization applying.

4. The organizational models for delivery of training.

5. The usefulness to policy makers and service providers of the proposed training project and its potential for complementing existing training needs.

6. The extent to which the applicant has displayed an appreciation for the special needs of clinics which serve rural and underserved areas.

7. Where competing projects are of approximately equal quality and only one grant can be funded, priority will be given to grantees not previously funded by OPA.

Applicants may provide training services directly or indirectly through subcontractors or consultants.

Review Under Executive Order 12372

Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR Part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOCs comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, Room 736E, H.H.H. Building, 200 Independence Avenue, SW., Washington, DC 20201. Such comments must be received by the Office of Population Affairs by July 20, 1986 to be considered.

When final funding decisions have been made, all applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and the terms and conditions of the grant award.

Dated: March 21, 1986.

Jo Ann Gasper,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 86–9280 Filed 4–24–86; 8:45 am]

BILLING CODE 4160–17–M

Coordination and Maintenance Committee; Meeting

Notice is hereby given that the ICD–9–CM Coordination and Maintenance Committee will convene on Wednesday, May 21, 1986 and Thursday, May 22, 1986 from 9:30 a.m. to 4:00 p.m. both days in Room 703A of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20021.

AGENCY: National Center for Health Statistics (NCHS), Public Health Service.

SUMMARY: This second notice announces the third meeting of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) Coordination and Maintenance Committee.

SUPPLEMENTARY INFORMATION: The ICD–9–CM is the clinical modification of the World Health Organization's International Classification of Diseases, Ninth Revision. It is the coding system required for use by hospitals and other health care facilities in reporting both diagnoses and surgical procedures for Medicare, Medicaid and all other health-related HHS programs. The work of the ICD–9–CM Coordination and Maintenance Committee will allow this coding system to continue to be an appropriate reporting tool for use by Federal programs.

The Committee is composed entirely of representatives from various Federal agencies interested in the International Classification of Diseases (ICD) and its modification, updating, and use for Federal programs. It is Co-Chaired by the National Center for Health Statistics

and the Health Care Financing Administration.

At the third meeting of the ICD–9–CM Committee, members will continue the previous discussions for updating ICD–9–CM, Volume 3 procedures. These discussions include proposals for developing additional ICD–9–CM codes for new technologies such as lasers in medicine and surgery and parenteral and enteral nutrition. Additional items for discussion include a proposed new classification for HTLV–3/LAV infections and revisions for urethroscopy and pyeloscopsy procedure codes. The meeting is open to the public and attendance, proposal submittals and participation by interested parties are encouraged.

FOR FURTHER INFORMATION, CONTACT: Ms. Sue Meads, Co-Chairperson, National Center for Health Statistics, Room 2–19, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436–7019 or Ms. Lisa Levine, telephone (301) 597–0610.

Dated: April 11, 1986.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 86–9283 Filed 4–24–86; 8:45 am]

BILLING CODE 4160–17–M

Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409–24, August 31, 1982, as amended most recently at 50 FR 29767, July 22, 1985) is amended to reflect a realignment of the Headquarters components of the Indian Health Service, Health Resources and Services Administration.

Under HB–10, Organization and Functions, delete all of the statement for the *Indian Health Service (HBN)* through *Division of Indian Resources Liaison (HBNG3)* and substitute the following:

Indian Health Service (HBN). The Indian Health Service (IHS) assures a comprehensive health services delivery system for American Indians and Alaska Natives with sufficient options to provide for maximum tribal involvement in meeting their health needs. The goal of IHS is to raise the health level of the Indian and Alaska Native people to the highest possible level.

To carry out its mission and to attain its goal, IHS: (1) Assists Indian Tribes in developing their capacity to man and manage their health programs through activities including health management training, technical assistance and human resource development; (2) facilitates and assists Indian Tribes in coordinating health planning, in obtaining and utilizing health resources available through Federal, State and local programs, in operating comprehensive health programs, and in health program evaluation; (3) provides comprehensive health care services, including hospital and ambulatory medical care, preventive and rehabilitative services, and development of community sanitation facilities; and (4) serves as the principal Federal advocate for Indians in the health field to assure comprehensive health services for American Indians and Alaska Natives.

Office of the Director (HBN 1). Provides overall direction and leadership for IHS by: (1) Establishing goals, objectives, policies and priorities in pursuit of the IHS mission; (2) providing leadership to ensure the delivery of high quality, comprehensive health services; (3) coordinating IHS activities and resources internally and externally with those of other governmental and non-governmental programs, promoting optimum utilization of all available health resources; (4) developing and demonstrating alternative methods and techniques of health services management and delivery with a view to provide Indian Tribes and other Indian community groups with optional ways of participating in the Indian health program; (5) developing individual and tribal capacities to participate in Indian health programs through means and modalities which they deem appropriate to their needs and circumstances; (6) affording Indian people an opportunity to enter a career in the IHS by applying Indian preference; (7) keeping the public fully informed on the activities of the IHS; and (8) encouraging full application of the principles of EEO.

Office of Administration and Management (HBN13). Under the direction of the Associate Director for Administration and Management: (1) Provides IHS-wide leadership, program direction, and coordination of all phases of management; (2) provides management expertise and staff advice and support to the Director in program and policy formulation and execution; and (3) plans, directs, and coordinates IHS activities in the area of management policy, internal control reviews, records management, financial management, personnel management, debt management, third-party reimbursement, manpower management, grants and contracts management, procurement, personal property accountability and management, and administrative services.

Office of Planning, Evaluation and Legislation (HBN15). Under the direction of the Associate Director for Planning, Evaluation and Legislation: (1) Serves as the IHS's primary staff element and principal source of advice on program planning, program evaluation, and legislative affairs; (2) develops, in collaboration with financial management staff, the long-range program and financial plan for the IHS; (3) oversees, in coordination with the Office of the Administrator, HRSA, communications between IHS and higher levels of the Department on all matters that involve long-range plans, evaluations of program performance, or legislative affairs; (4) develops long-range goals, objectives, and priorities for the IHS; (5) directs all activities within the IHS which compare the costs of the Agency's programs with their benefits, including the preparation and implementation of comprehensive program evaluation plans; (6) directs all the legislative affairs of IHS, including the development of legislative proposals and a legislative program; (7) plans, develops, directs and coordinates an analytical statistical reporting system providing data for measuring health status and appraising program activities; (8) conducts policy analyses and develops policy positions in programmatic areas for IHS; (9) acts as the focal point for the preparation, development, and monitoring of IHS regulations; (10) assures the development and implementation of IHS program appeals processes within the Service; (11) provides leadership, guidance, and coordination of the health data systems support activities; and (12) administers the implementation of the Privacy Act and the Freedom of Information Act within the IHS.

Office of Tribal Activities (HBNG). Under the direction of the Associate Director for Tribal Activities: (1) Serves as the focal point to provide policy guidance to Tribes and tribal organizations; (2) identifies the needs for and characteristics of optional methods and techniques for Indian program participation; (3) implements new methods and techniques for Indian community participation in and management of their health programs; (4) assists Tribes, as appropriate, that do not want to manage their own health programs to gain greater influence over their community's health programs by providing the Tribes with technical

assistance, training, and guidance; (5) advises on the Indian community development implications of the Service's plans, programs and operations; (6) develops standards and policy for all tribal contracts; and (7) provides broad guidance on the conduct of tribal contract reviews by the Area Offices.

Office of Health Programs (HBNH). Under the direction of the Associate Director for Health Programs: (1) Provides consultation and technical assistance to all operating and management levels of the IHS and Indian Tribes in the design and implementation of health management and health delivery systems; (2) provides guidance and support to all field activities related to the day-to-day delivery of health care; (3) provides Service-wide leadership in health programs in relation to IHS goals, objectives, policies, and priorities; (4) directs the development and implementation of health care administration and direct and contract health services, standards, quality control and quality assurance, operational planning activities and program reviews of health programs; and (5) provides leadership, guidance, and coordination of the health manpower and training programs.

Office of Environmental Health and Engineering (HBNJ). Under the direction of the Associate Director for Environmental Health and Engineering: (1) Provides leadership, guidance and coordination to the overall IHS environmental health, Indian sanitation facilities construction and health care facilities engineering programs; (2) serves as the principal advisor in policy development for IHS environmental health and facilities engineering programs; (3) develops and coordinates program requirements for the planning, design, construction and evaluation of IHS health care and sanitation facilities and personnel quarters; (4) administers the management, maintenance and repair of IHS real property incuding existing IHS health care facilities and IHS personnel quarters; and the design, construction, operation and maintenance of sanitation facilities; (5) administers nationwide IHS facilities engineering and construction programs for IHS health care facilities with the support of the Office of Engineering Services; (6) develops, coordinates, and evaluates technical standards, guides, plans and requirements for IHS environmental health and facilities engineering programs; (7) administers IHS environmental health programs including occupational safety and health, accident prevention and injury control; as well as biomedical engineering and energy conservation activities; (8) provides consultation and technical assistance to and monitors as appropriate, IHS Area Offices, tribal governments and Alaska Native corporations on facilities planning and construction programs; (9) coordinates IHS requirements for shared or cooperative projects with Federal Agencies such as DOE, DOD, VA, HUD, State and regional planning bodies, etc; and (10) provides consultation to professional standards organizations and related groups such as the Joint Commission for the Accreditation of Hospitals and National Research Council.

Office of Health Program Development (HBNK). Under the direction of the Associate Director for Health Program Development: (1) Develops and demonstrates methods and techniques for the improved operations and management of the health program; (2) provides consultation and technical assistance to all operating and management levels of the Indian Health Service and Indian tribes in the design and implementation of health management and service delivery systems; (3) coordinates health research and development activities within the Service directed toward improving the health of Indian people; (4) provides or develops appropriate training courses, methods and plans for human resource development; and (5) provides direct or indirect health services for the Indian people in the IHS Service Units under the jurisdiction of the Office.

This realignment is effective upon date of signature.

Dated: April 14, 1986.

Donald Ian Macdonald,

Acting Assistant Secretary for Health.

[FR Doc. 86-9281 Filed 4-24-86; 8:45 am]

BILLING CODE 4160-16-M

Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to reflect revisions in Chapter HB (Health Resources and Services Administration) and Chapter HN (National Institutes of Health). These changes will implement the requirements of Pub. L. 99-158 (Part E, Subpart 3) pertaining to nursing research and research training activities. Specifically:

(1) The statement for the Health Resources and Services Administration (47 FR 38409-24, August 31, 1982, as amended most recently at 51 FR 9894-95, March 21, 1986), is amended to revise the functional statement for the Division of Nursing (HBP4), Bureau of Health Professions, to delete references to nursing research and research training activities. These activities are transferred to the National Institutes of Health. The Center for Nursing Research, within the Division, is abolished.

(2) The statement for the National Institutes of Health (40 FR 22859, May 27, 1975, as amended most recently at 51 FR 12928-30, April 16, 1986), is amended to reflect the establishment of the National Center for Nursing Research. The Center will provide a focal point for the conduct and support of, and dissemination of information pertaining to, basic and clinical nursing research, research training, and other programs in patient care research.

Health Resources and Services Administration

Under Part H, Chapter HB, Health Resources and Services Administration, Section HB-20, Functions, delete the statement for the *Division of Nursing (HBP4),* Bureau of Health Professions, and insert a new statement as follows:

Division of Nursing (HBP4). Serves as principal focus for nursing education and practice. Specifically: (1) Provides the professional nursing expertise and leadership required by the Bureau in planning, coordinating, evaluating, and supporting development and utilization of the Nation's health personnel resources; (2) supports and conducts programs with respect to the development utilization, and quality of nursing personnel, including registered nurses, practical or vocational nurses, and nursing aides; (3) assists State and local areas in planning, developing, and improving nursing services and educational programs; (4) conducts and supports programs related to the provision of nursing care to advance the health status of individuals, families, and communities; (5) conducts and supports studies and evaluations of nursing personnel requirements, distribution and availability, and cooperates with other components of the Bureau and Agency in such studies; (6) analyzes and interprets nursing programmatic data collected from a variety of sources; (7) engages with other Bureau programs in cooperative

efforts of development and demonstration on the interrelationships between individual members of the health care team, their tasks, education requirements, and related training modalities; (8) maintains liaison with health professional groups and others, including consumers, having common interest in the Nation's capacity to deliver nursing services: (9) fosters, supports and conducts projects to expand the scientific base of nursing practice and role reformulation and to develop and incorporate new knowledge into practice and education; and (10 provides consultation and technical assistance to public and private organizations, agencies, institutions, the PHS Regional Offices, program units of the Federal Government, and international agencies and ministries of health on all aspects of nursing.

Section HB–30, Delegations of Authority. All of the authorities delegated to the Administrator, HRSA, under Title IV of the PHS Act, as amended, are hereby, revoked. All other delegations and redelegations of authority made to HRSA officials which were in effect immediately prior to this reorganization shall continue in effect.

National Institutes of Health

Under Part H, Chapter HN, National Institutes of Health, *Section HN–B, Organization and Functions,* after the statement for the *John E. Fogarty International Center (HN–5),* add the following statement:

National Center for Nursing Research (HN–7). Foster, conducts, supports, and administers research and research training programs directed at promoting the growth and quality of research related to nursing and patient care and expanding the pool of experienced nurse researchers through: (1) Research grants, contracts, and cooperative agreements to institutions and individuals; (2) individual and institutional research training awards; (3) promotion of closer interaction with other bases of health care research; and (4) collection and dissemination of research findings in these areas.

Section HN–D, Delegations of Authority. No delegation of authority is needed because all authorities under Title IV of the PHS Act have previously been delegated to the Director, NIH.

Effective Date: April 16, 1986.

Donald Ian Macdonald,

Acting Assistant Secretary, for Health.

[FR Doc. 86–9282 Filed 4–24–86; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[I–15247]

Idaho; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a portion of the withdrawal for the Minidoka Reclamation Project continue for an additional 100 years, which is the estimated time the lands will continue to be used for the purpose for which withdrawn. The lands would remain closed to surface entry and mining but have been and would remain open to the mineral leasing laws.

DATE: Comments should be received within 90 days of the date of publication of this notice.

ADDRESS: Comments should be sent to:

Idaho State Director, Bureau of Land Management, 3380 Americana Terrace, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office, 208–334–1597.

The Bureau of Reclamation proposes that a portion of the land withdrawal made by the Secretarial Order of July 12, 1921, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714. The land is described as follows:

Boise Meridian, Idaho

T. 7 S., R. 30 E.,
Sec. 12, lots 4 and 6;
Sec. 13, lots 2, 3, 5 and 6.
T. 7 S., R. 31 E.,
Sec. 2, lot 7;
Sec. 3, lots 3, 4, 7 and 12;
Sec. 4, lots 3, 4, 6 and 8;
Sec. 5, lots 1 and 8;
Sec. 17, lot 2;
Sec. 18, lots 9 and 14;
Sec. 20, lot 3;
T. 4 S., R. 33 E.,
Sec. 31, lots 2, 8, 9, 10, 11 and 12;
Sec. 32, lots 8, 9 and 10.

The area described contains 687.42 acres in Power and Bingham Counties.

The purpose of the withdrawal is to protect the lands for use as an irrigation storage facility (American Falls Reservoir). The withdrawal presently segregates the land from surface entry and mining. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in correction with the proposed withdrawal continuations may present their views in writing to the Idaho State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: April 18, 1986.

William E. Ireland,

Chief, Realty Operations Section.

[FR Doc. 86–9223 Filed 4–24–86; 8:45 am]

BILLING CODE 4310–GG–M

Phoenix District Advisory Council, Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets May 28, 1986, in Phoenix, Arizona. The meeting will start at 9:30 a.m. in the Phoenix District Office, 2015 W. Deer Valley Road.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The Agenda for the meeting includes:

Phoenix Resource Area Resources Management Plan
Upper Sonoran Wilderness Environmental Impact Statement
BLM Land Exchange Program
BLM Management Updates
Business from the floor
Public comments and statements
Future meetings and agenda topics

SUPPLEMENTARY INFORMATION: This is a public meeting and BLM welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.

Dated: April 17, 1986.

Deane H. Zeller,

Acting District Manager.

[FR Doc. 86–9310 Filed 4–24–86; 8:45 am]

BILLING CODE 4310–32–M

[NM 59499-OK]

Public Land Sale in Woodward County, OK

AGENCY: Bureau of Land Management, Interior.

ACTION: Partial cancellation of land sale.

SUMMARY: The following described land in Woodward (WW) County, Oklahoma as published in the **Federal Register**, Volume 51, No. 40, on February 28, 1986, at page 7134 is hereby removed from sale in its entirety.

Legal Description

Tract: WW-1.
T. 21 N., R. 17 W., IM,
Sec. 30: NE¼SW¼
Acreage: 40.00 acres.

The reason for the removal of this tract from the sale is that a protest has been lodged by an adjacent land owner who is contesting the method of sale. The land will be reoffered for sale upon the resolution of the subject protest.

FOR FURTHER INFORMATION CONTACT: Hans Sallani, 405-231-5491.

Jim Sims,
District Manager.

[FR Doc. 86-9311 Filed 4-24-86; 8:45 am]
BILLING CODE 4310-FB-M

[OR-37150]

Conveyance of Public Lands and Order Providing for Opening of Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 720 acres of public lands out of Federal ownership. This action will also open 3,247.78 acres of reconveyed lands to surface entry. A total of 709.36 acres will be opened to mining and mineral leasing. Of the balance, 1,363.21 acres have been and remain open to mining and mineral leasing and the mineral estate in 1,175.21 acres was not conveyed to the United States.

EFFECTIVE DATE: May 27, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 720 acres of lands in Wheeler County, Oregon, from Federal to private ownership.

2. In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 1 S., R. 18 E.,
sec. 36, SE¼SE¼.
T. 2 S., R. 18 E.,
sec. 1, SE¼NE¼.
T. 1 S., R. 19 E.,
sec. 30, lot 11;
sec. 31, lots 2, 5, 6, 7, 8, 10, 11, and 12, and W½SE¼.
T. 2 S., R. 19 E.,
sec. 6, lots 3 and 5, SW¼NE¼, SE¼NW¼, and N½NE¼SE¼.
T. 6 S., R. 19 E.,
sec. 28, S½NW¼, N½SW¼, and SW¼SW¼;
sec. 29, E½, NE¼NW¼, SE¼SW¼, and that portion of the W½W½ lying east of the John Day River;
sec. 31, that portion of the E½E½ lying east of the John Day River;
sec. 32, E½ and all of W½ lying east of the John Day River;
sec. 33, NW¼NE¼, N½NW¼, SW¼NW¼, SW¼, and W½SE¼.
T. 7 S., R. 19 E.,
sec. 4, lots 2, 3, and 4, S½NW¼, and SW¼;
sec. 5, lots 1 and 2, S½NE¼, SE¼, and that portion of the N½SW¼ lying east of the John Day River.

The areas described aggregate approximately 3,247.78 acres in Gilliam, Sherman, and Wheeler Counties.

3. The mineral estate in the following described lands is already in Federal ownership and has been and will remain open to operation of the mining laws and mineral leasing laws:

Willamette Meridian

T. 6 S., R. 19 E.,
sec. 29, E½, NE¼NW¼, and SE¼SW¼;
sec. 32, NE¼, E½NW¼, NE¼SW¼, and NE¼SE¼;
sec. 33, NW¼NE¼, NE¼NW¼, E½SW¼, SW¼SW¼, and W½SE¼.
T. 7 S., R. 19 E.,
sec. 4, SE¼NW¼;
sec. 5, lots 1 and 2, S½NE¼, and SE¼.

The areas described aggregate 1,363.21 acres in Wasco and Wheeler Counties.

4. The mineral estate in the following described lands was not reconveyed to the United States and will not be opened to operation of the mining laws and mineral leasing laws:

Willamette Meridian

T. 6 S., R. 19 E.,
sec. 28, S½NW¼, N½SW¼, and SW¼SW¼;
sec. 29, that portion of the W½W½ lying east of the John Day River;
sec. 31, that portion of the E½E½ lying east of the John Day River;
sec. 32, SE¼SW¼, NW¼SE¼, and S½SE¼;
sec. 33, W½NW¼, and NW¼SW¼.
T. 7 S., R. 19 E.,
sec. 4, lots 2, 3, and 4, S½NW¼, and SW¼;
sec. 5, that portion of the N½SW¼ lying east of the John Day River.

The areas described aggregate approximately 1,175.21 acres in Wasco and Wheeler Counties.

5. At 8:30 a.m., on May 30, 1986, the lands described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on May 30, 1986, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

6. At 8:30 a.m., on May 30, 1986, the lands described in paragraph 2, except as provided in paragraphs 3 and 4, will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

7. At 8:30 a.m., on May 30, 1986, the lands described in paragraph 2, except as provided in paragraphs 3 and 4 will be open to applications and offers under the mineral leasing laws.

Dated: April 15, 1986.

B. LaVelle Black,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-9308 Filed 4-24-86; 8:45 am]
BILLING CODE 4310-33-M

[OR-37644]

Conveyance of Public Land and Order Providing for Opening of Land; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 45 acres of public land out of Federal ownership. This action will also open 40 acres of

reconveyed land to surface entry, mining and mineral leasing.

EFFECTIVE DATE: May 27, 1986.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION:

1. Notice is hereby given that in an exchange of lands made pursuant to Section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 45 acres of land in Malheur County, Oregon, from Federal to private ownership.

2. In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 30 S., R. 45 E.,
sec. 27, NE¼NW¼.

3. At 8:30 a.m., on May 29, 1986, the land described in paragraph 2 will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on May 29, 1986, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on May 29, 1986, the land described in paragraph 2, will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. At 8:30 a.m., on May 29, 1986, the land described in paragraph 2, will be open to applications and offers under the mineral leasing laws.

Dated: April 14, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–9309 Filed 4–24–86; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Record of Decision for Issuance of Endangered Species Permit To Allow Incidental Take of the Coachella Valley Fringe-Toed Lizard

AGENCY: Fish and Wildlife Service (FWS), Interior (DOI).

ACTION: Notice of record of decision.

SUMMARY: Notice is hereby given that the Fish and Wildlife Service has decided to issue a permit to allow incidental taking of the Coachella Valley fringe-toed lizard (CVFTL) (*Uma inornata*) a threatened species, in certain areas of the Coachella Valley of California. This Record of Decision (ROD) was prepared in accordance with the Council on Environmental. Quality Regulations, 40 CFR 1505.2. This decision is based upon: information contained in the Final Environmental Impact Statement (EIS) (FES 86–1) which was filed with the Environmental Protection Agency on January 26, 1986 and became available to the public on February 5, 1986; provisions of the Coachella Valley Fringe-toed Lizard Habitat Conservation Plan (HCP); two Implementing Agreements for the HCP; comments from the public regarding the EIS and HCP; and compliance with the terms and conditions for the issuance of a permit for incidental taking under Section 10(a) of the Endangered Species Act as amended, and revised implementing regulations for Section 10(a), (50 CFR Parts 13 and 17).

The HCP provides the framework for minimizing and mitigating the impacts from incidental taking. Its conservation program has two major features:

Direct conservation—setting aside land in three reserves and controlling land use on other lands through management and regulations (zoning) compatible with CVFTL habitat.

Mitigation fee—collecting mitigation fees for development of private lands within the occupiable habitat of the CVFTL habitat.

The HCP is supported by two Implementing Agreements which make the HCP explicit and enforceable. The first Implementing Agreement between the FWS, the Nature Conservancy (TNC) (a non-profit corporation), and the local land use authorities commits the permit applicant to exert land use controls and to collect mitigation fees for development and sets forth the responsibilities of the FWS, TNC, the permit applicants, and the local land use authorities. The second Cooperative Management Agreements commits the FWS, Bureau of Land Management, California Department of Fish and Game, and TNC to the management and maintenance of the three habitat reserves. The Section 10(a) Permit has a 30–year term and may be renewed at the end of that period.

SUPPLEMENTARY INFORMATION:

I. Background

A. Endangered Species Act Requirements

Section 9 of the Endangered Species Act of 1973, as amended, (ESA or the Act) and regulations implementing the Act prohibit the taking of species listed as "threatened" pursuant to the Act. Section 10(a) of the Act, however, authorizes the Service to Permit the taking of threatened species if such taking is "incidental to, and not the purpose of, the carrying out of an otherswise lawful activity." (16 U.S.C. 1539). In order to qualify for this provision, the permit applicant must submit a conservation plan to the Service that specifies:

(1) The impact which will likely result from the taking;

(2) What steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement the mitigation;

(3) What alternative actions to the taking the applicant considered and the reasons why the alternatives are not being utilized; and

(4) Such other measures that the Secretary may require.

In order to issue a permit pursuant to a submitted conservation plan, the Secretary is required to find that:

(1) The taking will be incidental;

(2) The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of the taking;

(3) The applicant will ensure that adequate funding for the plan will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The other measures specified by the Secretary will be met.

The Conference Report on the Endangered Species Act Amendments of 1982 indicates that this provision was modeled after the San Bruno Mountain Area Habitat Conservation Plan. (H.R. Rep. No. 97–835, 97th Cong. 2d Sess. 30 (1982).)

B. The Coachella Valley Fringe-Toed Lizard Habitat Conservation Plan

The U.S. Fish and Wildlife Service (FWS) has been requested to issue a permit to allow incidental taking of the

CVFTL a threatened species, under Section 10(a) of the Act and promulgated in 50 CFR Part 17 (50 FR 39681). The applicants for the permit consist of the following California local governments: County of Riverside and Cities of Desert Hot Springs, Plam Springs, Cathedral City, Rancho Mirage, Palm Desert, Indian Wells, La Quinta, Indio, and Coachella. Since settlement began in the Coachella Valley, CVFTL habitat which consists of flat valley lands covered with wind blown sand deposits, has been undergoing conversion to urban and agricultural uses. In 1984 only 70 square miles of the historic 200 square miles of CVFTL habitat remained. By the year 2000 the predicted increase of year-round residents in the Valley will result in the conversion of an additional 40 square miles of the remaining viable habitat. The Section 10(a) Permit for incidental taking based on a reasonable conservation plan would promote the long-term survival and recovery of the CVFTL while authorizing regulated development in the Coachella Valley.

Regulations implementing the Endangered Species Act prohibit "taking" of the CVFTL (50 CFR 17.31), and "taking" is defined as killing, capturing, harming, or collecting individual specimens. Because the CVFTL is intrinsically confined to its habitat, virtually any land use which disturbs or converts habitat could result in "taking", which would be in violation of the Act. The local land use governments (the applicants) are mandated to approve/disapprove land use plans within their respective jurisdictions. When approval of land use plans result in habitat conversion, their processes for making decisions on land use plans may be in conflict with provisions of the Act to protect the CVFTL. Although the proposed action in the EIS, application for a Section 10(a) Permit, was initiated by the local land use governments and not the Federal governments, the FWS must act upon the application and decide whether to issue the requested Section 10(a) Permit.

Alternative Considered

In making a decision regarding the issuance of the requested Section 10(a) Permit, the FWS evaluated three main alternatives including the proposed action.

Alternative 1—Proposed Action: The proposed action is the issuance of a permit under section 10(a) of the Act, which would authorize incidental taking of fringe-toed lizards during the course of otherwise lawful activities carried out in the Coachella Valley which are outside of lizard preserve areas and lands owned or administered by the Federal Government including lands owned or held for the benefit of Native Americans. County and municipal zoning restrictions, mitigation fee requirements, and grading and building permit requirements would determine what activities in the Valley would be "otherwise lawful." The permit is conditioned on a Habitat Conservation Plan (HCP) for the CVFTL which is supported by two Implementing Agreements. They establish the roles and responsibilities of the applicants to collect fees and administer the permit, and define the goals and responsibilities of the four principal land administrators of the three habitat reserves.

Alternative 2—No action. This alternative proposed that no 10(a) Permit would be issued and that other means would be used to accomplish conservation of the CVFTL. Three means for accomplishing this no action alternative were considered: (1) Status quo—variable enforcement of the ESA; (2) enforcement of ESA without any exceptions; and (3) a preserve funded entirely by the Federal government.

Alternative 3—Different configuration of reserves. This alternative proposes the issuance of a permit for incidental taking based on different scenarios of reserve configurations and conditioned by a different or amended HCP. These include: (1) Fewer reserves; (2) a greater number or reserves; and (3) multiple small, individual reserves as mitigation for "taking" on adjacent lands under the same ownership.

II. Findings Supporting Approval of the Section 10(a) Permit

A. Analysis of Public Comments

The Service received two letters of comment on the final EIS. No opposition was voiced in either letter. No substantive comments were received on the permit application notice published in the **Federal Register** on March 6, 1986.

B. Summary of Environmental Documentation

The findings referenced below are based on the information contained within the administrative record on this matter which includes but is not limited to, the following major documents:

(1) Coachella Valley Fringe-toed Lizard Habitat Conservation Plan Steering Committee, "Coachella Valley Fringe-toed Lizard Habitat Conservation Plan" (June 1985).

(2) Two Implementing Agreements with respect to the Coachella Valley Fringe-toed Lizard Habitat Conservation Plan.

(3) U.S. Fish and Wildlife Service, "Final Environmental Impact Statement Regarding Adoption and Implementation of Coachella Valley Fringe-toed Lizard Habitat Conservation Plan and Endangered Species Act Section 10(a) Permit" (April 1986).

C. Statement of Facts in Support of Findings

In accordance with the requirements of the Act, the Service hereby makes the following statements of fact in support of the findings described below.

(1) The area of consideration in the HCP consists of approximately 240,000 acres in the Coachella Valley. The area is within the jurisdiction and/or planning jurisdiction of the County of Riverside and nine Cities (Desert Hot Springs, Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, Indian Wells, La Quinta, Indio, and Coachella).

(2) The 10(a) permit will authorize incidental taking of fringe-toed lizards during the course of otherwise lawful activities carried out in the Coachella Valley which are outside of lizard preserve areas and lands owned or administered by the Federal Government including lands owned or held for the benefit of Native Americans. County and municipal zoning restrictions, mitigation fee requirements, and grading and building permit requirements would determine what activities in the Valley would be "otherwise lawful."

(3) The HCP establishes three major reserves (Coachella Valley preserve, Willow Hill-Edom Hill Reserve and Whitewater Floodplain Reserve) each with an unobstructed sand source. A total of 12,382 acres of CVFTL habitat, (of which 11,757 are still subject to sand transport) are to be conserved by a combination of acquisition and management. Of this, 7,058 acres represent the occupiable CVFTL habitat to be acquired. The acreages in these three reserves total 15.2 percent of the historic habitat of the CVFTL and 26.8 percent of the remaining habitat not yet subject to sand stabilization.

(4) Mitigation fees on land which is developed would fund management of the reserves and part of the acquisition of the reserves. Land converted to agriculture would not be subject to the fee; however, land which was not in agriculture prior to August 1983 would be subject to mitigation fees when developed. The fee assessment area would encompass about 70,000 acres within the historic range of the CVFTL, 51,000 of which would be developable without any restriction. Mitigation fees would be assessed on all parcels

regardless of size and would be based on the acreage disturbed. A fee of $600/acre disturbed would be assessed until a total of $7 million has been collected, after which the fee would drop to $100/acre for the remainder of the 30-year life of the permit. Growth projections indicate that an estimated total of $10 million from mitigation fees will be collected over the 30 year period.

(5) The CVFTL is closely adapted to living in the specialized, extreme environment of windblown sand, and is dependent upon this habitat for its survival. While several distinct types of sand deposits afford habitat to the lizard, the species shows a preference for fine sand, and for the lee side of dunes and hummocks. The sand transport process which creates the blowsand ecosystem is a fundamental consideration in conservation planning.

(6) Based on current evidence and the opinion of the Recovery Team and other scientists, the proposed size and configuration of the reserves will promote the survival and recovery of the species in the wild.

III. Findings

On the basis of the statement of facts described above and the other information contained within the administrative record on this permit application, the Service hereby makes the following findings:

(1) The HCP, including the Implementing Agreements and the EIS, specifies:

(a) The impact which will likely result from the taking of the Coachella Valley fringe-toed lizard;

(b) What steps the applicants will take to minimize and mitigate such impacts, and funding that will be available to implement such steps;

(c) What alternative actions to such taking were considered and reasons why such alternatives are not being utilized; and

(d) Such other measures as are necessary or appropriate for the purposes of the plan.

(2) The taking of Coachella Valley fringe-toed lizard will be incidental to, and not the purpose of, the implementation of the HCP. The purpose of the HCP and the Implementing Agreements is to provide for the protection and enhancement of the CVFTL while at the same time allowing otherwise lawful development on certain designated parts of the Coachella Valley.

(3) The County, the Cities, and other parties to the HCP and its Implementing Agreements will, to the maximum extent practicable, minimize and mitigate the impact of the taking of the CVFTL. The mitigation required by the HCP and Implementing Agreements as conditions of the Section 10(a) Permit includes, but is not limited to: (a) Specifying lands which are to be conserved by acquisition, management or land use regulation, and lands which are to serve as the mitigation fee area; (b) establishing three reserves; and (c) providing adequate permanent funding for reserve habitat acquisition and management.

(4) The applicants have ensured that adequate funding for the HCP will be provided. These assurances are described in detail in the Implementing Agreements.

(5) Any incidental takings of CVFTL which may occur will not appreciably reduce the likelihood of the survival and recovery of the species in the wild nor result in the adverse modification or destruction of its critical habitat as noted in the ESA Section 7(b) Biological Opinion.

Having considered the surrounding facts and circumstances of the case and possible positive and negative effects discussed above, the Service has concluded that issuance of the 10(a) permit is the environmentally preferable alternative.

FOR FURTHER INFORMATION CONTACT: Merle Richmond, Environmental Specialist, U.S. Fish and Wildlife, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232; telephone (503) 231-6131 or FTS 429-6131.

Dated: April 21, 1986.

Rolf L. Wallenstrom,

Associate Director—Federal Assistance.

[FR Doc. 86-9326 Filed 4-24-86; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30804]

Southern Railway Co. Acquisition Exemption; Birmingham Terminal Co.

Southern Railway Company (SRC) and Birmingham Terminal Company (BTC) filed a notice of exemption for SRC to acquire certain real estate, track and other road properties of BTC.

All of the capital stock of BTC is owned by SRC, The Alabama Great Southern Railroad Company (AGS), and Central of Georgia Railroad Company (CGRC). Both AGS and CGRC are wholly-owned subsidiaries of SRC. The shareholders propose to dissolve BTC and distribute its assets to the shareholders. As pertinent here, SRC will acquire BTC's operating assets consisting of less than two acres of real estate and one side track less than 1,500 feet long, together with any appurtenant operating property or fixtures and real estate. No reductions in service are contemplated.

This is a transaction within a corporate family of the type specifically exempted from the necessity of prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any employees affected by the acquisition will be protected under *New York Dock Ry.—Control—Brooklyn Eastern Dist.* 360 I.C.C. 60 (1979).

Decided: April 3, 1986.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 86-9295 Filed 4-24-86; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 34)]

Intrastate Rail Rate Authority-Washington

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Certification.

SUMMARY: The Commission grants final certification to the Washington Utilities and Transportation Commission (Washington) under 49 U.S.C. 11501(b) to regulate intrastate rail transportation, subject to a condition precedent that it make the changes as set forth in the full decision, and the condition precedent that it make the changes as set forth in the full decision, and the condition precedent that Washington notify us, before the date on which certification is scheduled to begin, that it has made (or if unable to do so within this time, that it will make) the required modification, and that its modified standards and procedures have been officially and finally adopted.

DATES: If the necessary changes are made, certification will begin May 23, 1986.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in

the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, D.C. 20423, or call 289–4357, DC Metropolitan area or toll free (800) 424–5403.

Decided: April 9, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

James H. Bayne,

Secretary.

[FR Doc. 86–9294 Filed 4–24–86; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 30640]

Rarus Railway Corp.; Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts *nunc pro tunc* from the requirements of 49 U.S.C. 10901 the sale and transfer of the rail line of the Butte, Anaconda & Pacific Railway Company, in Deer Lodge and Silver Bow Counties, MT, to the State of Montana.

DATES: This exemption was effective on May 1, 1985. Petitions to reopen must be filed by May 15, 1986.

ADDRESSES: Send pleadings referring to Finance Docket No. 30640 to:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

Mark M. Levin, Suite 350, 1575 Eye Street, N.W., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: April 10, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley. Commissioner Lamboley dissented in part with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86–9400 Filed 4–24–86; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out is responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the OMB reviewer, Nancy Wentzler, Telephone 202 395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, Washington, DC 20503.

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Survey of Employment Service Automation
ETA RC 88
One-time only Survey
State or local governments
52 respondents; 416 hours; no forms

To survey State employment service use of automation in delivery of program services in response to a request from Congress.

Revision

Employment Standards Administration
Application for Authority for an Institution of Higher Education to Employ its Full-Time Students at Subminimum Wages Under Regulations Part 519
1215–0080; WH–201–MIS
Annually
State or local governments; Business or other for-profit; Non-profit institutions; Small business or organizations
435 responses, 218 hours, 1 form

This information is needed to determine whether an institution of higher education should be authorized to pay subminimum wages to full-time students under the provisions of section 14(b)(3) of the FLSA. The Division uses the information to approve such authority for the respondents.

Extension

Mine Safety and Health Administration
Respirator Program Records
1219–0048
On occasion
Businesses and other for profit; small businesses or organizations
800 respondents; 5,000 hours

Requires operators of metal and nonmetal mines to establish a program which consists of written standard operating procedures governing the selection, use, and care of respirators. Respirator programs are required to be established when engineering controls fail to reduce airborne contaminants to permissible levels. Mine operators are also required to conduct fit testing of

respirator devices and to keep records of the results.

Signed at Washington, DC, this 22nd day of April, 1986.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 86-9345 Filed 4-24-86; 8:45 am]

BILLING CODE 4510-27-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of pervailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume III

Washington:
WA86-9 ..... pp. 365e-365m.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT86-1 (Jan. 3, 1986) ..... p. 64.
New Jersey:
NJ86-2 (Jan. 3, 1986) ..... pp. 580-584.
NJ86-3 (Jan. 3, 1986) ..... pp. 599-603.
NJ86-4 (Jan. 3, 1986) ..... pp. 622-624.
New York:
NJ86-7 (Jan. 3, 1986) ..... pp. 693-698.
..... pp. 699-703.
NY86-9 (Jan. 3, 1986) ..... p. 723.
NY86-10 (Jan. 3, 1986) ..... p. 725.
Virginia:
VA86-14 (Jan. 3, 1986) ..... p. 1086.
VA86-15 (Jan. 3, 1986) ..... p. 1089.

Volume II

Iowa:
IA86-2 (Jan. 3, 1986) ..... p. 30.
Michigan:
MI86-1 (Jan. 3, 1986) ..... pp. 386,393.
MI86-2 (Jan. 3, 1986) ..... pp. 400-409.
Ohio:
OH86-3 (Jan. 3, 1986) ..... p. 696.

Volume III:

Alaska:
AK86-1 (Jan. 3, 1986) ..... pp. 2, 4.
California:
CA86-4 (Jan. 3, 1986) ..... pp. 66-68, p. 71.
pp. 77-78.
Colorado:
CO86-1 (Jan. 3, 1986) ..... p. 98.
CO86-4 (Jan. 3, 1986) ..... pp. 373-375.
Montana:
MT86-1 (Jan. 3, 1986) ..... p. 154.
North Dakota:
ND86-1 (Jan. 3, 1986) ..... p. 204.
Washington:
WA86-1 (Jan. 3, 1986) ..... pp. 299-326.
WA86-3 (Jan. 3, 1986) ..... pp. 339-350.
Listing by location (index) ..... pp. xxv-xxvi.
Listing by decision (index) ..... p. xxviii.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 80

Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. The subscription cost is $277 per volume. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 18th day of April 1986.

James L. Valin,

Assistant Administrator.

[FR Doc. 86-9078 Filed 4-24-86; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-86-53-C]

Ranger Fuel Corp.; Petition for Modification of Application of Mandatory Safety Standard

Ranger Fuel Corporation, P.O. Box 966, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its Beckley No. 1 Mine (I.D. No. 46-02166) located in Raleigh County, West Virginia. Th petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that lighting be provided in the mine while self-propelled mining equipment is operated in the working place.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected and that technology is not available to safely maintain the lighting system at coal heights of 38 inches or less.

3. Miners have difficulty maintaining the lighting due to low coal, wants, and faults in the coal seam. The necessary drilling and shooting of wants and faults to advance the face damages the light fixtures, wiring, and ballast boxes; miners are then exposed to injuries between chocks to make repairs. Wiring to maintain the lighting system is exposed in the crawl space of the chocks and interferes with the miners performing their duties.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 22, 1986. Copies of the petition are available for inspection at that address.

Dated: April 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-9346 Filed 4-24-86; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-86-29-C]

Western Energy Co.; Petition for Modification of Application of Mandatory Safety Standard

Western Energy Company, P.O. Box 99, Colstrip, Montana 59323 has filed a petition to modify the application of 30 CFR 77.802 (protection of high-voltage circuits; neutral grouding resistors; disconnecting devices) to its Rosebud No. 6 Mine (I.D. No. 24-01747) located in Rosebud County, Montana. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that high-voltage circuits supplying portable or mobile equipment contain either a direct or derived neutral which is grounded through a suitable resistor at the source transformers.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners required to inspect, maintain, test and repair the grounding resistor and associated devices mounted in the utility switchyard. Miners working on portable equipment in the mine could be exposed to a hazard because positive 15 KV isolation cannot be maintained between the utility ground system and the mine safety ground system during a utility line-to-ground fault in the switchyard.

3. As an alternate method, petitioner proposes to move the grounding resistor 6000 to 8000 feet out of the utility switchard to an enclosed stationary switchgear house located on mine property. The neutral would be derived at this stationary switchgear house by a neutral grouding transformer, and grounded through a neutral grounding resistor mounted nearby.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Admininstration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 27, 1986. Copies of the petition are available for inspection at that address.

Dated: April 17, 1986.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 86-9347 Filed 4-24-86; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[V-85-1]

ASARCO Inc.; Variance Application

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: This notice announces the withdrawal of the application of ASARCO Incorporated for permanent variance from the standards prescribed in 29 CFR 1910.1018(e)(3)(ii) and 29 CFR 1910.1025(d)(6)(iii) concerning the requirements of the inorganic arsenic and lead standards for frequency of exposure monitoring.

Notice of this application for permanent variance appeared in the **Federal Register** of March 22, 1985 (50 FR 11598-11601).

FOR FURTHER INFORMATION CONTACT: Mr. James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3656, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 18th day of April, 1986.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 86-9343 Filed 4-24-86; 8:45 am]

BILLING CODE 4510-26-M

[V-85-5]

Chlorine Institute, Inc.; Variance Application

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: This notice announces the withdrawal of the application of the Chlorine Institute, Inc., on behalf of its members, for permanent variance from the standards prescribed in 29 CFR 1910.134(b)(11) concerning the use of approved or accepted respirators against the particular hazards for which they were designed in accordance with standards established by competent authorities.

Notice of this application for permanent variance appeared in the **Federal Register** of June 18, 1985 (50 FR 25343–46).

FOR FURTHER INFORMATION CONTACT: Mr. James J. Concannon, Director, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3656, 200 Constitution Avenue, NW., Washington, DC, 20210.

Signed at Washington, DC this 18th day of April, 1986.

Patrick R. Tyson,

Acting Assistant Secretary.

[FR Doc. 86-9344 Filed 4-24-86; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Charter Extension of the Advisory Committee on Merit Review

The Advisory Committee on Merit Review was scheduled to expire on April 24, 1986. The life of the Committee has now been extended until August 29, 1986 to allow time for the Committee to complete its final report. The Director of the National Science Foundation has determined that the extension is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, GSA.

April 22, 1986.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 86-9234 Filed 4-24-86; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Connecticut Yankee Atomic Power Company; Environmental Assessment and Finding of No Significant Impact

[Docket No. 50-213]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a temporary exemption from the regulatory requirements of General Design Criterion No. 35 (GDC 35) of 10 CFR 50, Appendix A, and the Interim Acceptance Criteria for Emergency Core Cooling Systems for Light Water Reactors 10 CFR, Appendix A, Part 3 (36 FR 12249), concerning the consideration of single failures in emergency core cooling system evaluations to the Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) for the Haddam Neck Plant, located at the licensee's site in Middlesex County, Connecticut.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a temporary exemption from the regulatory requirements of GDC 35 and the Interim Acceptance Criteria (IAC) concerning the consideration of single failures in emergency core cooling systems (ECCS) evaluations for the period of one operating cycle.

On March 25, 1986, CYAPCO reported the identification of a small range of break sizes in one loop of the reactor coolant system (RCS) for which safety injection flow, during only the high pressure recirculation mode may be insufficient to provide adequate core cooling. By letter dated April 10, 1986, CYAPCO identified measures to provide adequate core cooling in the event of a small-break loss-of-coolant accident (LOCA). CYAPCO's proposed interim measures included the use of the high pressure safety injection (HPSI) system, the residual heat removal (RHR) system and certain operator actions. However, CYAPCO noted that two valves, which are used during the HPSI recirculation mode, did not meet the prescribed single failure requirements of GDC 35. CYAPCO committed to impose monthly surveillance and cycling requirements for these valves to provide added assurance of valve operability.

By letter dated April 22, 1986, CYAPCO requested a temporary exemption from the regulatory requirements of GDC 35 and the IAC concerning the consideration of single failures in ECCS evaluations. The granting of the exemption from single failure considerations for the two valves outside containment is the proposed action being considered by the staff.

The Need for the Proposed Action

Provisions requiring consideration of single failure in this context are set forth both in GDC and the Interim Acceptance Criteria. GDC 35 provides in applicable part as follows:

"A system to provide abundant emergency core cooling shall be provided . . . suitable redundancy in components and features . . . shall be provided to assure that for onsite electric power system operation (assuming offsite power is not available) and for offsite electric power system operation (assuming onsite power is not available) the system safety function can be accomplished, assuming a single failure."

Further, the Interim Acceptance (IAC), to which Haddam Neck was originally evaluated, provide as follows:

The combination of systems used for analyses should be derived from a failure mode and effects analyses, using the single failure criterion.

Thus, for either GDC 35 or the IAC, a single requirement is imposed on ECCS evaluations of light water power reactors, including the Haddam Neck Plant.

The exemption is requested specifically with respect to two valves, both outside containment, which would be used under procedurally defined conditions to respond to a small break LOCA. CYAPCO hs implemented measures to assure valve operability of these valves, and by procedure has established another alternative flow path in the event those valves are inoperable despite best efforts to assure operability.

Environmental Impacts of the Proposed Action

The proposed exemption affects the consideration of single failures for two valves which are used in the HPSI recirculation mode. One measure of environmental impact is whether the proposed exemption results in an overall reduction in the probability of adverse consequences from reactor operation that could affect the public health and safety. In this instance, the original high pressure recirculation mode using the charging pumps has been found to be deficient for a narrow spectrum of breaks, whereas the safety benefits derived from using the HPSI pumps represent a credit for a much broader range of postulated breaks. CYAPCO has estimated that the implementation of the proposed interim response measure (use of HPSI pumps during recirculation) decreases the overall core

melt frequency associated with small and medium break LOCA's at Haddam Neck by a minimum of 27 percent over the original design.

CYAPCO has stated that the HPSI recirculation option involves the recirculation of primary fluids outside containment in systems not previously analyzed for those conditions. If gross fuel failure were assumed, there would be a potential for offsite radiological consequences in excess of the guideline values of 10 CFR Part 100. As a result, leakage tests were performed on the HPSI recirculation system pumps and valve and no leakage was apparent. CYAPCO concludes that operation of the recirculation mode will preclude gross fuel failures following the small break LOCA. Even if fuel failures were assumed, it is very unlikely that core damage would be so substantial as to cause offsite releases to approach those assessed in hypothetical accidents calculations carried out for Part 100 purposes. Further, given the very low probability of any such release, the effect on overall plant risk would not be significant. The proposed exemption does not otherwise affect facility radiological impacts, does not affect plant non-radiological effluents and has no other environmental impact.

Therefore, the Commission concludes there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impacts need not be evaluated. One alternative to the exemption would be to require repairs be made to the subject ECCS to satisfy the prescribed regulatory requirements. Such an action would not significantly enhance the protection of the environment, may not be the best long-term solution and would result in a diversion of utility engineering resources from determining a safe and reliable long-term solution.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for the Haddam Neck Plant.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letter dated April 1, April 10 and April 22, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Russell Library, 123 Broad Street, Middletown, Connecticut 06547.

Dated at Bethesda, Maryland, this 23rd day of April 1986.

For The Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, Integrated Safety Assessment, Project Directorate, Division of PWR Licensing—B.

[FR Doc. 86-9464 Filed 4-24-86; 8:45 am]

BILLING CODE 7590-01-M

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a proposed revision to a guide in its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft, temporarily identified by its task number, ES 926-4 (which should be mentioned in all correspondence concerning this draft guide), is the second proposed Revision 1 to Regulatory Guide 1.23 and is entitled "Meteorological Measurement Program for Nuclear Power Plants." The guide is being revised to consolidate into a single document existing regulatory guidance on meteorological measurement programs. The guide endorses, with certain exceptions, ANSI/ANS-2.5-1984, "Standard for Determining Meterological Information at Nuclear Power Sites."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555. Comments will be most helpful if received by June 23, 1986.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 21st day of April 1986.

For the Nuclear Regulatory Commission.

Karl R. Goller,

Director, Division of Radiation Programs and Earth Sciences, Office of Nuclear Regulatory Research.

[FR Doc. 86-9327 Filed 4-24-86; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Performance Review Board; Membership

Notice is hereby given in accordance with 5 U.S.C. 4314 of a revision in the membership of the Performance Review Board of the Office of the United States Trade Representative (USTR). The revision consists of the following appointments:

Chair—S. Bruce Wilson, Assistant United States Trade Representative for Industry and Service.

Alternate—W. Douglas Newkirk, Assistant United States Trade Representative for GATT Affairs.

Members—Alan F. Holmer, General Counsel, James W. Frierson, Chief of Stafff, Peter F. Allgeier, Assistant United States Trade Representative for Asia and the Pacific.

Executive Secretary—John P. Giacomini, Director, Office of Management.

This will be effective as of February 3, 1986.

John P. Giacomini,

Director, Office of Management.

[FR Doc. 86-9277 Filed 4-24-86; 8:45 am]

BILLING CODE 3190-01-M

SMALL BUSINESS ADMINISTRATION

Region VIII Advisory Council; Public Meeting

The U.S. Small Business Administration, Region VIII, located in the geographical area of Sioux Falls, South Dakota, will hold a public meeting on Friday, May 16, 1986, from 9:00 a.m. to 3:00 p.m., at the Community Room, First National Bank in Sioux Falls, 100 South Phillips, Sioux Falls, South Dakota 57102, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call Chester B. Leedom, District Director, U.S. Small Business Administration, Suite 101, Security Building, 101 South Main, Sioux Falls, South Dakota 57102, 605/336-2980, Ext. 231.

Jean M. Nowak,

Director, Office of Advisory Councils.

April 18, 1986.

FR Doc. 86-9269 Filed 4-24-86; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/964]

Advisory Committee on South Africa; Open Meetings

The Advisory Committee on South Africa will hold open meetings on June 2 and 3, 1986 from 9 a.m. to 4 p.m. The meetings will be held in Room 1105, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meetings will be to discuss how the United States can be most effective in encouraging the elimination of apartheid and its effects in South Africa. Persons interested in addressing the Committee on June 2 or 3 should write directly to C. William Kontos at 1730 K Street, Suite 209, Washington, DC 20006 before May 15, 1986, and give the following information: name, address, phone number (during normal working hours), capacity in which presentation will be made, and nature of presentation.

Individual presentations will be limited to a maximum of 10 minutes. Written copies of presentations will be helpful, but not required. Additional written presentations by interested persons who may not be able to address the Committee may be submitted to C. William Kontos at the above address before June 2, 1986.

Due to time constraints, it may not be possible to accommodate all persons interested in addressing the Committee. Efforts will be made to ensure that persons addressing the Committee represent the broadest range of opinions on the subject of South Africa.

Members of the public will be admitted to the meetings up to the seating capacity of room. Access to the State Department is controlled. All persons wishing to attend one or both meetings should make arrangements in advance by contacting Ann Miller at (202) 632-0075. All attendees should use the C Street entrance to the building.

Requests for further information should be directed to Ann Miller at (202) 632-0075.

Dated: April 22, 1986.

C. William Kontos,

Executive Director.

[FR Doc. 86-9302 Filed 4-24-86; 8:45 am]

BILLING CODE 4701-26-M

DEPARTMENT OF TRANSPORTATION

Agreements Filed Under Sections 408, 409, 412 and 414; Week Ending April 18, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Apr. 15, 1986	43954, R-1 and R-2.	Members of International Air Transport Association	Specify fares between SID-BXO	May 1, 1986.
Do	43955	do	Specific Commodity Rates Fares	Apr. 1, 1986. Apr. 15, 1986. May 1, 1986.
Apr. 17, 1986	43964	do	Europe-Japan Adjustment Factors	May 1, 1986.
Do	43965	do	GIT fares from Japan to Washington, DC	June 1, 1986.
Do	43966	do	Europe-Mideast Revalidation	Apr. 25, 1986.
Do	43967	do	Johannesburg-Lilongwe Rate Increase	May 1, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-9332 Filed 4-24-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43837]

TWA-Ozark Acquisition Case; Prehearing Conference

Notice is hereby given that pursuant to Department of Transportation Order 86-4-59 instituting this proceeding a prehearing conference will be held on April 28, 1986, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC, before the undersigned administrative law judge.

The instituting order sets forth a procedural schedule to be followed in this proceeding. Proposed evidence requests are required to be filed on April 24. Accordingly, the parties to this proceeding are directed to deliver one copy to each party and two copies to the judge on April 25 the following materials: (1) Proposed evidence requests; [1] (2) proposed stipulations, if any; and (3) proposed changes to the procedural schedule. Changes to the procedural schedule will be made only on a demonstration of prejudice by the moving party.

Dated at Washington, DC., April 22, 1986.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 86-9331 Filed 4-24-86; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43837]

TWA-Ozark Acquisition Case; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge John M. Vittone. Future communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg., 400 7th Street SW., Washington, D.C. 20590, telephone (202) 426-5560.

Dated: Washington, D.C., April 22, 1986.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 86-9330 Filed 4-24-86; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of Grants and Denials of Applications for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in March 1986. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1-Motor vehicle, 2-Rail freight, 3-Cargo vessel, 4-Cargo-only aircraft, 5-Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

RENEWAL AND PARTY TO EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
1479-X	DOT-E 1749	Allied Chemical, Morristown, NJ	49 CFR 173.315(a)(1)	To authorize use of non-DOT specification cargo tanks, for transportation of liquefied fluorine and mixture of liquefied fluorine and liquefied oxgen. (Mode 1)
1479-X	DOT-E 1479	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.315(a)(1)	To authorize use of non-DOT specification cargo tanks, for transportation of liquefied fluorine and mixture of liquefied fluorine and liquefied oxgen. (Mode 1)
2587-X	DOT-E 2587	Denison, Inc., Fredonia, KA	49 CFR 173.315(a)(1)	To authorize shipment of liquid oxygen in non-DOT specification cargo tanks. (Mode 1)
2787-X	DOT-E 2787	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.315(a)(1), 175.3	To authorize shipment of certain nonflammable compressed gases, in non-DOT specification pressure vessels equipped with a regulating valve, a pressure relief valve, and a squibb actuated valve. (Modes 1, 2, 3, 4)
3330-P	DOT-E 3330	Howmet Turbine Components Corp., Whitehall, MI.	49 CFR 173.214(b), 173.214(d)	To become a party to Exemption 3330. (Modes 1, 2)
3563-X	DOT-E 3563	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 173.302(a), 173.415, 175.3.	To authorize transport of a nonflammable, nonliquefied compressed gas, in an inside steel sphere. (Modes 1, 2, 3, 4, 5)
3667-X	DOT-E 3667	Groendyke Transport, Inc., Enid, OK	49 CFR 173.315(a)	To authorize transport of a flammable compressed gas in aluminum cargo tanks otherwise built in compliance with Specification MC-330. (Mode 1)
3941-X	DOT-E 3941	Kerr-McGee Chemcial Corp., Oklahoma City, OK.	49 CFR 173.239a(a)(2)	To authorize transport of ammonium perchlorate in non-DOT specification portable tanks. (Modes 1, 2)
4052-X	DOT-E 4052	The Boeing Co., Seattle, WA	49 CFR 173.305, 173.34(d), 175.3	To authorize shipment of an aerosol formulation pressurized with nitrogen in a DOT specification 39 seamless aluminum cylinder. (Modes 1, 2, 4, 5)
4453-X	DOT-E 4453	Ren-Loi, Inc., Bridgeville, PA	49 CFR 172.101, 173.114a(h) (3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3)
4453-P	DOT-E 4453	PACCO, Inc., Tenino, WA	49 CFR 172.101, 173.114a(h) (3), 176.415, 176.83.	To become a party to Exemption 4453. (Modes 1, 3)
4453-P	DOT-E 4453	Sierra Chemical Co., Reno, NV	49 CFR 172.101, 173.114a(h) (3), 176.415, 176.83.	To become a party to Exemption 4453. (Modes 1, 3)
4453-X	DOT-E 4453	H.L. & A.G. Balsinger, Inc., Bridgeville, PA.	49 CFR 172.101, 172.114a(h) (3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3)
4453-X	DOT-E 4453	Mountaineer Explosives, Inc., Bridgeville, PA.	49 CFR 172.101, 173.114a(h) (3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3)
4453-X	DOT-E 4453	PACCO, Inc., Tenino, WA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3)
4453-X	DOT-E 4453	Pacific Powder Co., Tenino, WA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-type tank, for transportation of blasting agent, n.o.s., or ammonium nitrate-fuel oil mixtures. (Modes 1, 3)

[1] The parties shall conform their evidence requests to the organization and numbering system of the proposed evidence request attached to the instituting order.

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
4453-X	DOT-E 4453	Pacific Motor Transport, Inc., Tenino, WA.	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-t tank, for transportation of blasting agent, n.o.s., or ammon nitrate-fuel oil mixtures. (Modes 1, 3)
4453-X	DOT-E 4453	Explo, Inc., Bridgeville, PA	49 CFR 172.101, 173.114a(h)(3), 176.415, 176.83.	To authorize use of a non-DOT specification bulk, hopper-t tank, for transportation of blasting agent, n.o.s., or ammon nitrate-fuel oil mixtures. (Modes 1, 3)
4600-X	DOT-E 4600	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.315, 178.245-3(a)	To authorize transport of hydrogen bromide (anhydrous in D Specification 51 type portable tanks with a design pressur 525 psig. (Mode 1)
4612-X	DOT-E 4612	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR 173.135, 173.122, 173.136, 173.139, 173.154, 173.206, 173.230, 173.245, 173.247, 173.252, 173.253, 173.271, 173.276, 173.281, 173.293, 173.346, 173.382.	To authorize shipment of small quantities of hazardous materia inside glass bottles overpacked in metal cans further overpac in DOT Specifcation 12B fiberboard boxes. (Mode 1)
4612-X	DOT-E 4612	EM Science, Cincinnati, OH	49 CFR 173.135, 173.122, 173.136, 173.139, 173.154, 173.206, 173.230, 173.245, 173.247, 173.252, 173.253, 173.271, 173.276, 173.281, 173.293, 173.346, 173.382.	To authorize shipment of small quantities of hazardous materia inside glass bottles overpacked in DOT Specification 12B fi board boxes. (Mode 1)
4850-X	DOT-E 4850	Halliburton Service, Inc., Duncan, OK	49 CFR 173.100 (cc), 175.3	To authorize shipment of flexible linear shaped charges, metal c in 100' lengths, containing not more than 50 grains per li foot of high explosive, as a class C explosive. (Modes 1, 2
5861-X	DOT-E 5861	HTL Industries, Inc., Duarte, CA	49 CFR 173.304(a)(1), 175.3, 178.47	To authorize use of a stainless steel other than prescribed in regulations, in the construction of a cylinder patterned after DOT Specification 4DS cylinders, for transportation of a nonfl mable compressed gas. (Modes 1, 2, 4, 5)
5891-X	DOT-E 5891	U.S. Department of Energy Washington, DC.	49 CFR 173.64(a)(4)	To authorize transport of high explosives in quantities greater t those authorized in 49 CFR, in DOT Specification 15A wood boxes. (Mode 1)
5951-X	DOT-E 5951	Dixie Petro-Chem, Inc., Dallas, TX	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxice, in DOT Spe cation 106A500 type tank. (Modes 1, 2)
5951-X	DOT-E 5951	Hill Brothers Chemical Co., Tucson, AZ	49 CFR 173.314(c)	To authorize transport of chlorine or sulfur dioxice, in DOT Spe cation 106A500 type tank. (Modes 1, 2)
6016-X	DOT-E 6016	Huber Supply Co., Mason City, IA	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in r DOT specification portable tanks. (Mode 1)
6016-X	DOT-E 6016	Guttman Welding Supply Co., Belle Vernon, PA.	49 CFR 173.315(a)	To authorize shipment of liquid oxygen, nitrogen, and argon in r DOT specification portable tanks. (Mode 1)
6309-P	DOT-E 6309	Foam Supplies Inc., Olivette, Mo	49 CFR 173.315(a)(1), 174.63(b)	To become a party to Exemption 6309. (Modes 1, 2)
6309-X	DOT-E 6309	Freeman Chemical Corp., Port Washington, WI.	49 CFR 173.315(a)(1), 174.63(b)	To authorize use of non-DOT specification steel portable tanks, transportation of certain nonpoisonous, nonflammable co pressed gases. (Modes 1, 2)
6309-X	DOT-E 6309	General Latex and Chemical Corp. of Georgia, Dalton, GA.	49 CFR 173.315(a)(1), 174.63(b)	To authorize use of non-DOT specification steel portable tanks, transportation of certain nonpoisonous, nonflammable co pressed gases. (Modes 1, 2)
6309-X	DOT-E 6309	Olin Corp., Stamford, CT	49 CFR 173.315(a)(1), 174.63(b)	To authorize use of non-DOT specification steel portable tanks, transportation of certain nonpoisonous, nonflammable co pressed gases. (Modes 1, 2)
6333-X	DOT-E 6333	Allied Corp., Morristown, NJ	49 CFR 173.49 CFR 173.245(a)(31), 173.263(a)(10), 173.268(b)(3), 173.272(i)(25), 178.343-1(b).	To authorize transport of certain corrosive liquids, in non-D specification type MC-312 glass lined cargo tanks. (Mode
6563-X	DOT-E 6563	S.L.O. Health Products, Inc., Baywood Park, CA.	49 CFR 173.302(a)(1), 175.3	To authorize shipment of certain nonflammable gases in non-D specification steel cylinders, made in compliance with D Specification 3E with certain exceptions. (Modes 1, 2, 3, 4
6602-X	DOT-E 6602	Ethyl Corp., Baton Rouge, LA	49 CFR 173.245(a), 173.314(c)	To authorize use of 105A500W or 106A500X multi-unit tank tanks, for shipment of certain corrosive liquids and nonflamma compressed gases. (Modes 1, 2)
6602-X	DOT-E 6602	Jones Chemicals, Inc., Caledonia, NY	49 CFR 173.245(a), 173.314(c)	To authorize use of 105A500W or 106A500X multi-unit tank tanks, for shipment of certain corrosive liquids and nonflamma compressed gases. (Modes 1, 2)
6602-X	DOT-E 6602	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.245(a), 173.314(c)	To authorize use of 105A500W or 106A500X multi-unit tank tanks, for shipment of certain corrosive liquids and nonflamma compressed gases. (Modes 1, 2)
6637-X	DOT-E 6637	Russell-Stanley Corp., city of Industry, CA.	49 CFR 173.119(a), 173.119(b), 173.119(m), 173.221,173.245(a)(26), 173.249(a)(1), 173.250a(a)(1), 173.257(a)(1), 173.263(a)(28), 173.265(d)(6), 173.266(b)(8), 173.272(i)(9), 173.276(a)(10), 173.277(a)(6), 173.287(c)(1), 173.289(a)(1), 173.292(a)(1), 173.346(a), 173.357(b), 173.358(a), 173.359(a), 173.359(b), 178.19.	To authorize manufacture, marking and sale of non-DOT Specifi tion polyethylene drums, for shipment of organic peroxi oxidizers, flammable, corrosive and Class B poisonous liqu (Modes 1, 2, 3)
6787-X	DOT-E 6787	Russell-Stanley Corp., city of Industry, CA.	49 CFR 173.119(a), 173.119(b), 173.119,(m), 173.221, 173.245, 173.346(a), 173.357(b), 173.358(a), 173.359(a), 173.359(b).	To authorize manufacture, marking and sale of DOT Specifica 34 polyethylene drums, for shipment of Class B poisono liquids, flammable liquids, organic peroxides and corrosive liqu (Modes 1, 2, 3)
6805-X	DOT-E 6805	Union Carbide Corp., Danbury, CT	49 CFR 173.301(d), 173.302(a)(3)	To authorize use of DOT Specification 3AAX steel cylinders, transportation of a flammable compressed gas mixture. (Mode
6824-X	DOT-E 6824	Bio/Lab, Inc., Conyers, GA	49 CFR 173.154, 173.217(a)	To authorize bromo-chloro-dimethylhydantoin, classed as an oxi er, as a additional commodity. (Modes 1, 2, 3)
6904-X	DOT-E 6904	Aldrich Chemical Co., Inc., Milwaukee, WI.	49 CFR173.246(a), 175.3	To authorize transport of certain corrosive materials in DOT spec cation 12A fiberboard boxes having inside glass acid resist bottles not exceeding 1 pint capacity. (Modes 1, 3, 4)
6985-X	DOT-E 6985	U.S. Department of Energy, Washington, DC.	49 CFR 173.154(a)(8), 173.86(a)	To authorize shipment of diallyl phthalate-pyrotechnic materials i aluminum case packed in a DOT specification wooden bo (Mode 1)
7011-X	DOT-E 7011	Russell-Stanley Corp., city of Industry, CA.	49 CFR 173.239a, 173.245b(a)(6)	To authorize manufacture, marking and sale of non-DOT specifi tion blow-molded high molecular weight polyethylene contain for transportation of corrosive materials and oxidizer. (Modes 2, 3)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7024-X	DOT-E 7024	Avondale Mills, Sylacauga, Al	49 CFR 173.249(a)(7)	To authorize transport of an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealdtanks. (Mode 1)
7024-X	DOT-E 7024	B.I. Transportation, Inc., Burlington, NC	49 CFR 249(a)(7)	To authorize transport of an alkaline corrosive liquid in non-DOT specification collapsible rubber containers identified as sealdtanks. (Mode 1)
7454-X	DOT-E 7454	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 176.410(e)(2), 176.83	To authorize blastings agent to be stowed in proximity to certain explosives without a bulkhead separating these materials. (Mode 3)
7455-X	DOT-E 7455	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 176.177(g), 176.177(h), 176.177(h), 176.177(q), 176.177(r), 176.177(e).	To authorize handling and stowage of explosive material in an anchored and unmanned barge. (Mode 3)
7477-X	DOT-E 7477	Systron Donner Corp., Concord, CA	49 CFR 173.302(a)(1), 173.304(a)(1), 175.3.	To authorize use of non-DOT specification seamless aluminum cylinders, for transportation of certain nonflammable compressed gases. (Modes 1, 2, 3, 4)
7548-X	DOT-E 7548	U.S. Department of Defense, Falls Chaurch, VA.	49 CFR, 46 CFR 146.29-100	To authorize stowage of explosives on deck of vessel, over the square of the hatch. (Mode 3)
7621-X	DOT-E 7621	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.357, 174.63(b)	To authorize use of DOT Specification 51/ISO portable tanks, for shipment of poison B liquid. (Modes 1, 2, 3)
7651-X	DOT-E 7651	Austin Powder Co., Cleveland, OH	49 CFR 173.93(e), 177.834(L)(1)	To authorize shipment of a class B liquid propellant explosive, in non-DOD specification sealdtanks. (Mode 1)
7654-X	DOT-E 7654	Mallinckrodt, Inc., Paris, KY	49 CFR 173.119(f)	To authorize use of a glass bottle not exceeding 500 milliliter capacity inside a metal container overpacked in a DOT specification 12B fiberboard box, for transportation of a flammable liquid. (Modes 1, 2)
7674-X	DOT-E 7674	U.S. Department of Defense, Falls Church, VA.	49 CFR 174.104(a)	To authorize shipment of certain class A explosives on flat-cars and open-top rail cars. (Mode 2)
7731-X	DOT-E 7731	Minnesota Valley Engineering, Inc., New Prague, MN.	49 CFR 172.101, 173.315(a)(1)	To authorize manufacture, marking and sale of non-DOT specification super-insulated portable tanks, for shipment of pressurized liquid helium and liquefied hydrogen. (Modes 1, 3)
7770-X	DOT-E 7770	ARBEL FAUVET RAIL, Paris, France	49 CFR 173.143, 173.264(b)(4), 174.63(b).	To authorize transport of anhydrous hydrogen fluoride or anhydrous methyilchloromethyl ether in certain non-DOT specification portable tanks. (Modes 1, 2, 3)
7770-X	DOT-E 7770	Eurotainer, S.A., Paris, France	49 CFR 173.143, 173.264(b)(4), 174.63(b).	To authorize transport of anhydrous hydrogen fluoride or anhydrous methylchloromethyl ether in certain non-DOT specification portable tanks. (Modes 1, 2, 3)
7898-X	DOT-E 7898	U.S. Departtment of Defense, Falls Church, VA.	49 CFR 173.145, 173.31(a)(4), 179.200-7(d).	To authorize transport of methylhydrazine in DOT specification 103A-ALW or 103CW tank cars. (Mode 2)
7915-X	DOT-E 7915	Olin Corp., East Alton, IL	49 CFR 173.93(b)	To authorize transport of certain propellant explosives in water in DOT specification MC-307 or MC-312 cargo tanks. (Mode 1)
7929-X	DOT-E 7929	C-I-L Inc., North York, Ont. Canada	49 CFR 173.65	To authorize transport of flaked or pelletized TNT in woven polyethylene or polypropylene cloth outer bags, with plastic film liners. (Modes 1, 2
7943-X	DOT-E 7943	Geogia-Pacific Corp., Montebello, CA	49 CFR 173.263(a)(15), 173.272(c), 173.272(i)(12), 173.277(a)(1).	To authorize shipment of corrosive liquids in fiberboard boxes complying with DOT specification 12B except for handholes in top flaps. (Mode 1)
7972-X	DOT-E 7972	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 172.504	To authorize transport of limited quantities of explosive in a special shipping container without placarding the vehicle. (Mode 1)
8006-X	DOT-E 8006	Kilgore Corp., Toone, TN	49 CFR 172.400(a), 172.504 Table 2	To authorize transport of unlabeled packages of toy paper or plastic caps complying with the requirements of 173.100(p) and 173.109, in motor vehicles with placards, when the gross weight of the caps is 1,000 pounds or more. (Mode 1)
8215-X	DOT-E 8215	Olin Corp., East Alton, IL	49 CFR 173.101, 173.107, 173.60, 173.74, 173.78, 173.93.	To authorize use of 3 gallon porcelain buckets for in plant shipment of rejected small arms ammunition. (Modes 1, 2)
8244-P	DOT-E 8244	Vann Systems, A Division of Halliburton Co., Houston, TX.	49 CFR 173.119, 173.125, 173.245, 173.263, 173.264, 173.289, 46 CFR 64.9.	To become a party to Exemption 8244. (Modes 1, 3)
8289-X	DOT-E 8289	Olin Corp., East Alton, IL	49 CFR 173.93	To authorize shipment of certain identified solid propellant explosive, class B, in non-DOT specification cylindrical metal cans overpacked in fiberboard boxes. (Modes 1, 3)
8299-X	DOT-E 8299	HTL Industries, Inc., Duarte, CA	49 CFR 173.304(a)(1), 175.3, 178.44	To authorize manufacture, marking and sale of a non-DOT specification pressure vessel comparable to a DOT specification 3HT cylinder with certain exceptions, for transportation of a compressed gas. (Modes 1, 2, 4, 5)
8303-X	DOT-E 8303	Sandoz Chemicals Corporation, Sodyeco Plant, Charlotte, NC.	49 CFR 172.101, 173.154, 173.326	To renew and to allow transportation to an additional site. (Mode 1)
8352-X	DOT-E 8352	Degussa Corp., Teterboro, NJ	49 CFR 173.154	To authorize shipment of ammonium persulfate and sodium persulfate in non-DOT specification plastic bags similar to DOT specification 44P bags. (Modes 1, 2, 3)
8363-X	DOT-E 8363	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.93(a)	To authorize shipment of certain solid propellant explosives in metal cannisters overpacked in DOT specification 12H65 fiberboard boxes. (Modes 1,3)
8390-X	DOT-E 8390	Allied Corp., Morristown, NJ	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%-98% sulfuric acid in DOT specification 2E polyethylene bottles overpacked in DOT specification 12A80 fiberboard boxes. (Mode 1)
8390-X	DOT-E 8390	Texas Instruments, Inc., Dallas, TX	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%-98% sulfuric acid in DOT Specification 2E polyethylene bottles overpacked in DOT specification 12A80 fiberboard boxes. (Mode 1)
8390-X	DOT-E 8390	Mallinckrodt, Inc., Paris, KY	49 CFR 173.272, 178.210, 178.24a	To authorize shipment of 95%-98% sulfuric acid in DOT specification 2E polyethylene bottles overpacked in DOT specification 12A80 fiberboard boxes. (Mode 1)
8394-X	DOT-E 8394	Whirlpool Corp., La Porte, IN	49 CFR Parts 100-177	To authorize transport of certain thermostatic elements containing small quantities of sodium potassium alloy, liquid packed in a strong fiberboard box. (Modes 1, 2, 3, 4, 5)
8427-X	DOT-E 8427	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.276	To authorize use of a stainless steel DOT specification seamless 3A or 3E cylinder, for shipment of a flammable liquid. (Mode 4)
8445-P	DOT-E 8445	Merrell Dow Pharmaceuticals Inc., Cincinnati, OH.	49 CFR Part 173, Subpart D, E, F, & H	To become a party to Exemption 8445. (Mode 1)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8445-X	DOT-E 8445	Kerr-McGee Chemical Corp., Oklahoma City, OK.	49 CFR Part 173, Subpart D, E, F, & H	To authorize shipment of various hazardous substances and wastes packed in inside plastic, glass, earthenware or metal containers, overpacked in a DOT specification removable head steel, fiber or polyethylene drum, only for the purposes of disposal, repackaging or reprocessing. (Mode 1)
8627-X	DOT-E 8627	Exxon Chemical Co., Houston, TX	49 CFR 173.119, 173.245, 178.253	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a track chassis, for transportation of flammable and corrosive liquids. (Mode 1)
8627-X	DOT-E 8627	Champion Chemicals, Inc., Houston, TX	49 CFR 173.119, 173.245, 178.253	To authorize use of six non-DOT specification portable tanks manifolded together within a frame and securely mounted on a truck chassis, for transportation of flammable and corrosive liquids. (Mode 1)
8697-X	DOT-E 8697	ERA Helicopters, Inc., Anchorage, AK	49 CFR 172.101, Column (6)b, 175.30(a)(1).	To authorize carriage of propane in DOT specification 4B240, 4BA240, 4BW240 cylinders via helicopter utilizing sling loads. (Mode 4)
8747-X	DOT-E 8747	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined 28/26 gauge DOT specification 37C80 steel drum of five gallon capacity. (Modes 1, 2, 3, 4)
8811-X	DOT-E 8811	American Hoechst Corp., Somerville, NJ	49 CFR 173.284, 178.340-3, 178.343-2	To authorize use of modified DOT specification MC-312 cargo tanks made of titanium, for shipment of certain corrosive materials. (Mode 1)
8870-X	DOT-E 8870	Hach Co., Ames, IA	49 CFR 172.101, 173.286, 175.3	To comingle compatible hazardous materials of various classifications packed in separate inside receptacles not exceeding 8 fluid ounces or ½ lb. packed inside a strong outside container, labeled according to the highest order of hazard, and described as chemical kit. (Modes 1, 2, 3, 4, 5)
8870-X	DOT-E 8870	Culligan International Co., Northbrook, IL	49 CFR 172.101, 173.286, 175.3	To comingle compatible hazardous materials of various classifications packed in separate inside receptacles not exceeding 8 fluid ounces or ½ lb. packed inside a strong outside container, labeled according to the highest order of hazard, and described as chemical kit. (Modes 1, 2, 3, 4, 5)
8870-X	DOT-E 8870	Everpure, Inc., Westmont, IL	49 CFR 172.101, 173.286, 175.3	To comingle compatible hazardous materials of various classifications packed in separate inside receptacles not exceeding 8 fluid ounces or ½ lb. packed inside a strong outside container, labeled according to the highest order of hazard, and described as chemical kit. (Modes 1, 2, 3, 4, 5)
8871-X	DOT-E 8871	Chase Bag Co., Oak Brook, IL	49 CFR 173.182, 173.217, 173.245(b), 173.366.	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags, having a capacity of approximately 2000 pounds each, and top and bottom outlets, for shipment of corrosive solids, nitrates and poisons. (Modes 1, 2, 3)
8885-X	DOT-E 8885	Copps Industries, Inc., Menomonee Falls, WI.	49 CFR 173.245, 173.249, 175.3	To authorize shipment of certain alkaline corrosive liquids, n.o.s., in an unlined tin can, overpacked in a non-DOT specification removable head molded polyethlyene pail of five or six-gallon capacity, also containing a nonhazardous resin mix. (Modes 1, 2, 3, 4)
8923-X	DOT-E 8923	Union Carbide Corp., Danbury, CT	49 CFR 173.119(m)	To authorize shipment of a 5 to 10 percent mixture of dicholorsilane with the balance being trichlorosilane. (Mode 1)
8988-P	DOT-E 8988	Marathon Oil Co., Lafayette, LA	49 CFR 172.101, 173.110, 173.80, 175.30.	To become a party to Exemption 8988. (Modes 1, 3, 4)
8995-P	DOT-E 8995	Foam Supplies Inc., Olivette, MO	49 CFR 173.315(a)(1), 173.346, 174.63(b).	To become a party to Exemption 8995. (Modes 1, 2)
9005-X	DOT-E 9005	Emerald Air, Austin, TX	49 CFR 172.101, 172.204(d)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize carriage of certain class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for shipment by air. (Mode 4)
9094-X	DOT-E 9094	CTL Distribution, Inc., Mulberry, FL	49 CFR 173.265	To authorize use of a DOT specification MC-312 stainless steel cargo tank, for transportation of a corrosive liquid. (Mode 1)
9117-X	DOT-E 9117	Flexbin Corp., Houston, TX	49 CFR 173.163, 173.164	To authorize manufacture, marking and sale of non-DOT specification semi-bulk bags of 22 cubic feet capacity, for transportation of an oxidizer. (Mode 1)
9117-X	DOT-E 9117	Flexbin Corp., Houston, TX	49 CFR 173.163, 173.164	To authorize manufacture, marking and sale of non-DOT specification semi-bulk bags of 22 cubic feet capacity, for transportation of an oxidizer. (Mode 1)
9130-P	DOT-E 9130	Aquarius Pool & Spa Supply, Inc., Elk Grove Village, IL.	49 CFR 173.154	To become a party to Exemption 9130. (Modes 1, 2)
9157-X	DOT-E 9157	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.314(c), 179.300-7	To authorize use of a non-DOT specification multi-unit tank car tank, for transportation of a flammable gas. (Mode 1)
9168-X	DOT-E 9168	All-Pak, Inc., Pittsburgh, PA	49 CFR 172.400, 172.504, 173.118, 173.244, 173.345, 173.346, 173.359, 173.370, 173.377, 175.3, 175.33.	To authorize an alternate specially designed packaging for shipment of limited quantities of flammable, corrosive and poison B materials without labeling. (Modes 1, 2, 4)
9181-X	DOT-E 9181	GTE Products Corp., Waltham, MA	49 CFR 173.206, 173.21, 173.247	To authorize transport of lithium metal and a thionyl chloride solution in the same non-DOT specification stainless steel vessel. (Mode 1)
9194-X	DOT-E 9194	Cyanamid Canada, Inc., Willowdale, Ont., Canada.	49 CFR 173.370	To authorize shipment of calcium cyanide, solid, in collapsible, water-tight, polyethylene-lined, woven polypropylene bags having a capacity of no more than 4,400 pounds. (Modes 1, 2)
9201-X	DOT-E 9201	Cyanamid Canada, Inc., East Willowdale, Canada.	49 CFR 173.370	To authorize of calcium cyanide, solid, in collapsible, water-tight, polyethylene-lined, woven polypropylene bags having capacity not exceeding 4,400 pounds, overpacked in wax-impregnated 500-pound test, double-wall (BC flute) corrugated fiberboard boxes, in full freight loads. (Modes 1, 2, 3)
9208-P	DOT-E 9208	U.S. Department of Energy, Washington, DC.	49 CFR 172.101, 173.114a	To become a party to Exemption 9208. (Modes 1, 2, 3)
9208-X	DOT-E 9208	U.S. Department of Defense, Falls Church, VA.	49 CFR 172.101, 173.114a	To authorize transport of an insensitive high explosive and munitions containing explosive classed as a blasting agent. (Modes 1, 2, 3)

RENEWAL AND PARTY TO EXEMPTIONS—Continued

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9209-X	DOT-E 9209	Allied Chemical, Morristown, NJ	49 CFR 173.266(c)	To authorize shipment of hydrogen peroxide solution in water containing 29%-32% hydrogen peroxide by weight, in a DOT-12P fiber board box containing one inside DOT-2U polyethylene container of not over 5 gallons or two inside DOT-2U polyethylene containers of not over 2½ gallon capacity each. (Modes 1, 2, 3)
9211-X	DOT-E 9211	American Overseas Marine Corp., Quincy, MA.	49 CFR 146.29-35(f)	To authorize installation and operation of electrically-powered lighting, air conditioning, alarm, fire detection, and cargo-handling systems in cargo holds containing class A, B and C explosives in a Maritime Prepositioning Ship (TAKX). (Mode 3)
9213-X	DOT-E 9213	Bulk-Pack, Inc., West Monroe, LA	49 CFR 173.162, 173.217, 173.245b	To authorize manufacture, marking and sale of large, collapsible polyethylene-lined woven polypropylene bulk bags having a capacity of approximately 2,000 pounds each, and top and bottom outlets, for shipment of corrosive solids and nitrates. (Modes 1, 2, 3)
9230-X	DOT-E 9230	Nuclear Metals Inc., Concord, MA	49 CFR 173.208, 175.30	To authorize transport of titanium metal powder, dry, in a spun aluminum inner packaging, placed in a DOT specification 17H or 17C steel drum. (Modes 1, 2, 3, 4)
9244-X	DOT-E 9244	Stoneco, Inc., Dacono, CO	49 CFR 172.101, 175.30	To authorize transport of explosive pest repellant devices, in fiberboard boxes packed in DOT specification 12B fiberboard boxes. (Modes 1, 2, 3, 4)
9428-X	DOT-E 9428	CGTX, Inc., Montreal, PA Canada	49 CFR 179.102-2(a)(3)	To authorize an additional 13 chlorine tank cars having modified insulation systems. (Mode 2)

NEW EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9436-N	DOT-E 9436	Union Carbide Corp. Danbury, CT	49 CFR 172.203, 173.318, 173.320, 176.30, 176.76(h).	To authorize manufacture, marking and sale of non-DOT specification portable tanks for transportation of liquid helium. (Modes 1, 3)
9496-N	DOT-E 9496	GPS Industries, city of Industry, CA	49 CFR 173.263(a)(26), 173.277(a)(6), 178.19.	To authorize non-DOT specification polyethylene bottles conforming with DOT specification 34 with certain exeptions, packed inside a high density polyethylene box having a corrugated fiberboard cover. (Mode 1)
9497-N	DOT-E 9497	Pressure Pak, East Hampton, CT	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of welded, nonrefillable, non-DOT specification steel cylinders made in compliance with DOT specification 39 with exceptions, for transportation of carbon dioxide. (Modes 1, 2, 4)
9525-N	DOT-E 9525	American Cyanamid Co., Wayne, NJ	49 CFR 178.42, Part 173, Subpart D, E, H.	To authorize use of a welded stainless steel cylinder equivalent to DOT specification 3E with exceptions, for transportation of certain pyroforic liquids, flammable liquids, poison B liquids and flammable solids. (Modes 1, 3, 4)
9534-N	DOT-E 9534	Hardigg Industries, Inc., South Deerfield, MA.	49 CFR 173.199, 173.125, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally-molded, cross-linked, polyethylene portable tanks for transportation of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3)
9547-N	DOT-E 9547	National Institutes of Health, Bethesda, MD.	49 CFR 173.179	To authorize transport of 100 grams of methyl nitro nitrosoguanidine in inside polyethylene bottles, polyethylene bags, metal cans and DOT specification 12B fiberboard box, packed in a DOT Specification 17H metal drum. (Mode 1)
9560-N	DOT-E 9560	Union Carbide Corp. St. Petersburg, FL	49 CFR 172.504, 172.506, 177.823	To authorize transport of oxygen, compressed, and oxygen, liquefied on the same motor vehicle to bear only the OXYGEN placard. (Mode 1)
9561-N	DOT-E 9561	Atrimet-indussa, Inc., New York, NY	49 CFR 173.366	To authorize transport of aresnic trioxide in non-DOT specification steel drums. (Modes 1, 2, 3)
9568-N	DOT-E 9568	AZTRON Chemical Services, Inc., South Houston, TX.	49 CFR 173.249	To authorize use of a DOT specification MC-306 tank motor vehicle for transportation of sodium hydroxide, liquid. (Mode 1)

EMERGENCY EXEMPTIONS

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9585-N	DOT-E 9585	Texaco Research Center, Beacon, NY	49 CFR 173.302, 173.304	To authorize a one-time shipment of unknown materials in deteriorated metal cylinders, overwrapped in polyethylene bag, hermetically sealed. (Mode 1)
EE 9586-N	DOT-E 9586	ISC Technologies, Inc., Lancaster, PA	49 CFR 173.113	To authorize transport of fuzes, detonating in packages exceeding weight limitations. (Mode 1)
EE 9588-N	DOT-E 9588	Mobay Corp., Kansas City, MO	49 CFR 173.359	To authorize a one-time shipment of a DOT specification MC-305 compartmented cargo tank containing approximately 5,000 gallons of diulfoton mixture liquid, class B poison. (Mode 1)
EE 9593-N	DOT-E 9593	Honeywell, Inc., Minnetonka, MN	49 CFR 172.101, 175.30	To authorize transport of ammunition for cannon class A explosives, and certain non-hazardous materials aboard cargo aircraft. (Mode 4)

WITHDRAWALS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8320-X	Merck Sharp and Dohne, West Point, PA.	49 CFR 173.387, 175.3	To authorize the transport of an etiologic agent in inside packagings exceeding 500 ml capacity. (Modes 1, 2, 4)

WITHDRAWALS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8987-X	Hedwin Corp., Baltimore, MD	49 CFR 178.35a-1	To authorize manufacture, marking and sale of DOT specification 2SL inside polyethylene containers of Type III, high density, high molecular weight resin, for transportation of those commodities presently authorized to be packaged in a DOT specification 2SL inside polyethylene container. (Modes 1, 2, 3)

Denials

8525–X Request by Associated Container Transportation (USA, New York, NY to authorize shipment of mineral monazite sand, classed as radioactive material, low specific activity, n.o.s. under modified exclusive use provisions denied March 10, 1986, as being unnecessary.

8525–X Request by Atlanttrafik Express Service, New York, NY to authorize shipment mineral monazite sand, classed as radioactive material, low specific activity, n.o.s. under modified exclusive use provisions denied March 10, 1986, as being unnecessary.

8966–P Request by Haviland Products Company, Grand Rapids, MI to authorize an alternate type packaging for shipment of sodium hypochlorite solution denied March 5, 1986.

Issued at Washington, DC on April 21, 1986.

J. Suzanne Hedgepeth,

Acting Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 86–9333 Filed 4–24–86; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirement Submitted to OMB for Review

Dated: April 21, 1986.

The Department of Treasury has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of this submission may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0134.
Form Number: IRS Form 1128.
Type of Review: Revision.
Title: Application for Change in Accounting Period.

OMB Number: 1545–0768.
Form Number: None.
Type of Review: Extension.
Title: EE–178–78 Final—Employers' Qualified Educational Assistance Programs

Clearance Officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Comptroller of the Currency

OMB Number: 1557–0147.
Form Number: None.
Type of Review: Extension.
Title: National Bank Lending Limits.

Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Neal (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 68–9285 Filed 4–24–86; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Career Development Committee, Notice of Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report for the calendar year 1985 has been issued for the Veterans Administration, Medical Research Service, Career Development Committee.

The report summarizes the activities for the committee on matters related to the review and evaluation of Career Development applications. It is available for public inspection at two locations:

Library of Congress, Serial and Government, Publications Reading Room LM 133, Madison Building, Washington, DC 20540, and
Veterans Administration, Medical Research Service, Career Development Program, Room 642, 810 Vermont Avenue NW., Washington, DC 20420

Dated: April 17, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–9272 Filed 4–24–86; 8:45 am]

BILLING CODE 8320–01–M

Medical Research Merit Review Boards; Availability of Annual Reports

Notice is hereby given that the Annual Reports of the Veterans Administration Medical Research Service Merit Review Boards for Calendar Year 1985 have been issued.

The reports summarize activities of the Boards on matters related to the review, discussion, and evaluation of individual investigator initiated medical research projects. They are available for public inspection at two locations:

Library of Congress, Serial and Government, Publications Reading Room LM 133, Madison Building, Washington, DC 20540, and
Veterans Administration, Medical Research Service, Program Review Division (151D), Room 634, 810 Vermont Avenue NW., Washington, DC 20420

Dated: April 17, 1986.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86–9273 Filed 4–24–86; 8:45 am]

BILLING CODE 8320–01–M

Veterans Administration Cooperative Studies Evaluation Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report for calendar year 1985 has been issued for the Veterans Administration Cooperative Studies Evaluation Committee.

The report summarizes activities of the Committee on matters related to the review and evaluation of new and on-going cooperative studies. It is available for public inspection at two locations:

Library of Congress, Serial and Government, Publications Reading Room LM 133, Madison Building, Washington, DC 20540, and
Veterans Administration, Medical Research Service, Cooperative Studies Program, Room 640, 810 Vermont Avenue NW., Washington, DC. 20420

Dated: April 17, 1986.

By Direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 86-9274 Filed 4-24-86; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 80
Friday, April 25, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Tuesday, April 29, 1986, 11:00 a.m.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–9370 Filed 4–23–86; 10:57 am]

BILLING CODE 6351–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, May 2, 1986, 11:00 a.m.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–9371 Filed 4–23–86; 10:58 am]

BILLING CODE 6351–01–M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, May 9, 1986, 11:00 a.m.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–9372 Filed 4–23–86; 10:59 am]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, May 16, 1986, 11:00 a.m.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–9373 Filed 4–23–86; 11:00 am]

BILLING CODE 6351–01–M

4

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, May 23, 1986, 11:00 a.m.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–9374 Filed 4–23–86; 11:01 am]

BILLING CODE 6351–01–M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: Friday, May 30, 1986, 11:00 a.m.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–9375 Filed 4–23–86; 11:02 am]

BILLING CODE 6351–01–M

7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time), Monday, May 5, 1986.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC. 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Open

1. Announcement of Notation Vote(s)
2. A Report on Commission Operations (Optional)
3. Proposed Contracts For Expert Services

Closed

1. Litigation Authorization; General Counsel Recommendations

Note—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634–6748 at all times for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: April 23, 1986.

This Notice Issued May 5, 1986.

Cynthia C. Matthews,

Executive Officer Executive Secretariat.

[FR Doc. 86–9457 Filed 4–23–86; 3:47 p.m.]

BILLING CODE 6750–06–M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 6:45 p.m. on Friday, April 18, 1986, the

Board of Directors of the Federal Deposit Insurance Corporation met in closed session by telephone conference call, to: (1) Receive bids for the purchase of certain assets of and assumption of the liability to pay deposits made in Florida Center Bank, Orlando, Florida, which was closed by the State Comptroller for the State of Florida, on Friday, April 18, 1986; (2) accept the bid for the transaction submitted by American National Bank of Florida, Jacksonville, Florida; and (3) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Mr. John F. Downey, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii) and (c)(9)(B)).

Dated: April 22, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-9380 Filed 4-23-86; 11:03 am]

BILLING CODE 6714-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, April 21, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. Williams Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration of the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Application of Maryland National Bank, Baltimore, Maryland, for consent to assume the liabililty to pay certain deposits made in Old Court Savings & Loan, Inc., Baltimore, Maryland, a noninsured institution.

The Board determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authtority of subsections, and (c)(9)(A)(ii), of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: April 22, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-9381 Filed 4-23-86; 11:04 am]

BILLING CODE 6714-01-M

10

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, April 30, 1986.

PLACE: Marriner S. Eccles Federal Reserve Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: April 23, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-9357 Filed 4-23-86; 10:20 am]

BILLING CODE 6210-01-M

11

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-16]

TIME AND DATE: Tuesday, April 29, 1986 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes
3. Ratification List
4. Petitions and Complaints:
   a. Certain Xenon Lamp Dissolver Slide Projectors (Docket No. 1310).
5. Investigations 701-TA-272 and 731-TA-319 [Preliminary] (Operators for jalousie and awning windows from El Salvador—briefing and vote.
6. Investigations 701-TA-257 [Final] (Certain fresh Atlantic groundfish from Canada)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

April 23, 1986.

[FR Doc. 86-9465 Filed 4-23-86; 3:51 pm]

BILLING CODE 7020-02-M

12

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [To be published].

STATUS: Open/closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, April 10, 1986.

CHANGE IN THE MEETING: Deletion/additional items.

An open meeting scheduled for Thursday, April 17, 1986, at 2:30 p.m. was cancelled.

Oral argument on appeals by Rooney Pace, Inc., a registered broker-dealer, Randolph K. Pace, its president, and the Commission's Division of Enforcement, from an administrative law judge's initial decision. For further information, please contact R. Moshe Simon at (202) 272-7400.

A closed meeting scheduled for Thursday, April 17, 1986, following the 2:30 p.m. open meeting, was cancelled.

Post oral argument discussion.

The following item will be considered

at an open meeting scheduled for Tuesday, April 22, 1986, at 2:30 p.m.

The Commission will consider accounting for oil price declines. For further information, please contact Howard Hodges at (202) 272–2553.

Commissioner Peters, as Duty Officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kathryn Natale at (202) 272–3195.

John Wheeler,

Secretary.

April 18, 1986.

[FR Doc. 86–9382 Filed 4–23–86; 12:46 pm]

BILLING CODE 8010–01–M

Federal Register

Friday
April 25, 1986

Part II

Environmental Protection Agency

40 CFR Part 763

Toxic Substances; Asbestos Abatement Projects; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 763

[OPTS-62044A; FRL 2965-7]

Toxic Substances; Asbestos Abatement Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a rule under section 6(a) of the Toxic Substances Control Act (TSCA). The rule will apply to asbestos abatement projects using employees not protected by regulations of the Occupational Safety and Health Administration (OSHA), by regulations of State plans adopted under the Occupational Safety and Health Act (OSHAct), or by State regulations in Idaho, Kansas, Oklahoma, and Wisconsin that EPA has determined are comparable to or more stringent than this rule.

DATE: This rule will be promulgated for purposes of judicial review at 1 p.m. eastern time on May 9, 1986. This rule is effective June 9, 1986.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, Office of TSCA Assistance (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Authority

Section 6(a) of TSCA authorizes EPA to impose a number of regulatory requirements concerning a chemical substance or mixture if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of the chemical substance, or any combination of such activities, presents or will present an unreasonable risk of injury to health or the environment. Among the requirements that EPA may impose are those listed in sections 6(a)(5) and 6(a)(6). Section 6(a)(5) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of commercial use of a chemical substance or mixture. Section 6(a)(6) of TSCA authorizes EPA to prohibit or otherwise regulate any manner or method of disposal of a chemical substance or mixture or any article containing that substance or mixture, by any person who uses or disposes of it for commercial purposes.

These sections provide authority for EPA to issue this rule, which establishes requirements to protect State and local public employees conducting asbestos abatement activities. The asbestos in buildings where State and local public employees may be involved in abatement has been sold as a commercial product. Therefore, regulation of abatement activities affecting asbestos use in these buildings, such as encapsulation or enclosure, is considered regulation of commercial use. The removal of asbestos, a disposal activity, will affect a number of commercial activities that take place in the public buildings and, therefore, is considered disposal for commercial purposes.

II. Background

EPA proposed a rule under section 6(a) of TSCA to protect State and local public employees who take part in asbestos abatement projects, but who are not covered by the OSHA Asbestos Standard or by regulations of State plans adopted under the OSHAct, as published in the **Federal Register** of July 12, 1985 (50 FR 28530). The proposed rule was effective immediately under section 6(d) of TSCA and will remain in effect until this final rule becomes effective on June 9, 1986.

EPA received over 20 comments from the public on the proposed rule and the final rule that EPA is issuing today includes changes in response to the public comments. Those changes are discussed in Unit IV below.

This rule is part of an EPA program to address the risks associated with asbestos in schools. As part of that program, EPA has established regional information centers to provide information concerning the identification and abatement of asbestos hazards and to train people in proper abatement techniques. To ensure that asbestos abatement is performed safely and correctly, EPA is helping States establish certification programs for asbestos abatement contractors. EPA is giving grants to several States to help them set up contractor certification programs and is advising States on ways to implement such programs. Through its technical assistance program, EPA provides guidance on asbestos matters to school officials and local health and education departments. Finally, EPA has updated existing guidance material and prepared new material.

III. Provisions of the Rule

This rule applies to asbestos abatement projects using State and local government employees not covered by either (1) the OSHA Asbestos Standard, 29 CFR 1910.1001, (2) an Asbestos Standard adopted by a State as part of a State plan approved by OSHA under section 18 of the OSHAct, or (3) a State asbestos regulation in Idaho, Kansas, Oklahoma, or Wisconsin. EPA has determined that these four State regulations are comparable to or more stringent than this rule. The rule defines asbestos abatement project as "any activity involving the removal, enclosure, or encapsulation of friable asbestos material, except removal, enclosure, or encapsulation during sampling or routine repair of less than either 3 linear feet or 3 square feet of friable asbestos material." The rule defines friable asbestos material as "any material containing more than 1 percent asbestos by weight which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure." Thus, the sampling of friable asbestos material and the routing repair or less than either 3 linear feet or 3 square feet of friable asbestos material are not covered by this rule at all.

The rule with certain exceptions, requires employers to report to EPA at least 10 days before they begin an asbestos abatement project covered by this rule. The first exception is for asbestos abatement projects involving the removal, enclosure, or encapsulation of less than either 3 linear feet or 3 square feet of friable asbestos material. These projects do not have to be reported at all. The second exception is for emergency projects, which EPA defines as "a project involving the removal, enclosure, or encapsulation of friable asbestos material that was not planned but results from a sudden unexpected event." Examples of emergency projects are repairs necessitated by serious vandalism, flooding, fire, boiler failure, and ruptured water pipes. Emergency projects do not have to be reported to EPA 10 days in advance. Instead, they must be reported "as soon as possible, but in no case more than 48 hours after the project begins." The third exception is for employers who submit a notice to EPA under the National Emission Standard for Asbestos, 40 CFR 61.146, at least 10 days before they begin the asbestos abatement project and the notice clearly indicates that employees covered by this rule will perform some or all of the asbestos abatement work.

Reports under this rule must include the employer's name and address; the location, including street address, of the project; and the scheduled starting and completion dates for the project.

The regulatory requirements of the rule are very close to the current OSHA Asbestos Standard, with the same PEL and work practice requirements.

This rule, like the proposal, does not include the part of the current OSHA Asbestos Standard which states that personnel rotation is preferred over use of respirators to meet the permissible exposure requirements. OSHA has announced its intention to revoke that provision (Ref. 12). EPA agrees with OSHA's statement that personnel rotation merely increases the population at risk and would not reduce the absolute number of excess deaths attributable to asbestos according to mathematical models.

This rule, like the proposal and the current OSHA Asbestos Standard, requires that employers initially monitor each workplace to determine whether employees' exposure to asbestos is below the limits set in the rule. After the initial determination, employers must collect samples of air levels "of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees." EPA encourages persons to monitor asbestos levels daily during abatement projects.

Because of OSHA's extensive experience in administering and enforcing its Asbestos Standard, EPA generally intends to follow OSHA's administrative interpretations of identical provisions in the Asbestos Standard. This includes the OSHA interpretation that the medical surveillance requirements are triggered by an action level of 0.1 fiber per cubic centimeter (f/cc) as a 7- or 8-hour time weighted average. Employers must conduct personal and environmental monitoring as required by the rule to see if that level is exceeded.

EPA will also follow OSHA's administrative interpretation concerning respirator requirements during demolition or removal of asbestos. As stated by OSHA, employees about to engage in the removal of demolition of pipes, structures, or equipment covered or insulated with asbestos, or in the removal or demolition of asbestos insulation or coverings, must use a type "C" continuous flow or pressure-demand, supplied-air respirator regardless of the concentrations of asbestos to which they may be exposed. However, if the employer has conclusively established the upper concentration of airborne asbestos that employees could be exposed to during demolition or removal, and the concentration does not exceed 100 times either the 8-hour time-weight average or ceiling limits, then any of the respirators permitted by the rule that affords adequate protection at such upper concentrations of airborne asbestos may be used. The establishment of the upper concentrations of airborne asbestos fibers may require considerable effort if there are variations from operation to operation. Proof that the average airborne concentrations of asbestos fibers that an employee may be exposed to will not exceed 100 times the 8-hour, time-weighted average or ceiling concentrations must be determined by the employer applying sound scientific or engineering principles.

EPA also wishes to clarify two provisons of the rule, which are identical to provisions of the current OSHA rule. First, the rule states that "insofar as practicable, asbestos shall be . . . removed . . . in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits . . ." EPA believes that it is practical to wet asbestos before removal in almost every situation.

Second, the rule states that "all external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration." EPA believes that visible accumulations of asbestos-containing debris could lead to excessive concentrations and should not be left after the conclusion of an asbestos abatement project.

IV. Future Revisions to This Rule

As noted above, EPA is adopting most provisions of the current OSHA Asbestos Standard in this final rule. As pointed out by comments, OSHA has recognized that employees exposed to asbestos at levels permitted by its current standard face a significant risk to health (Ref. 12). As also noted in comments, OSHA has proposed amending the current Asbestos Standard to lower the PEL to either 0.2 f/cc or 0.5 f/cc and to adopt an Asbestos Standard for the Construction Sector. EPA will amend this rule to be consistent with OSHA proposal after OSHA isues a final standard. This will ensure that all public and private sector employees who participate in asbestos abatement projects enjoy similar levels of protection. When EPA amends this rule to be consistent with the final OSHA standard, EPA will give the States of Idaho, Kansas, Oklahoma, and Wisconsin an appropriate amount of time (at least 6 months) to make conforming changes to their regulations.

Because of the extensive comment already received on the OSHA Standard, EPA will issue this amendment without further solicitation of public comment. Therefore, EPA suggests that any additional comments on this approach be submitted to EPA at this time. Comments should be submitted to the address provided above.

In its proposed rule, OSHA included a provision requiring the employer to institute a training program for employees exposed to airborne concentrations of asbestos in excess of either 0.2 or 0.5 f/cc without regard to the use of respirators. EPA is considering a related provision requiring State and local governments covered by this rule to have any employees who participate in asbestos abatement trained in an asbestos abatement course. Such a provision could involve setting training course criteria. Persons who wish to comment on this possible provision should submit their comments at this time. Whether or not EPA adopts a training requirement through rulemaking, EPA would like to point out that the FY 1986 Asbestos School Hazard Abatement Act (ASHAA) appropriation requires schools who receive ASHAA funds to select contractors for their abatement projects who are either State-certified or have attended an EPA approved training course.

V. Response to Comments

EPA received and has analyzed over 20 comments from the public on the proposed rule. The following summarizes the major comments and discusses the changes in the final rule in response to those comments. A more extensive response to comments document appears in the rulemaking record.

There were comments that coverage of the rule was unclear. In response to these comments, EPA clarified the rule to indicate clearly that the rule applies to project performed to abate asbestos hazards and to other asbestos abatement projects performed as part of a renovation or repair project.

There were also comments concerning the persons intended to be protected by the rule. In response to those comments, EPA revised the rule to make clear that the rule applies to persons who take part in asbestos abatement projects and not to other persons who may incidentally come into contact with asbestos. Asbestos abatement workers face a greater likelihood of significant exposure to asbestos than other persons who only incidentally come into contact with asbestos.

The proposed rule applied to all asbestos abatement projects, with no exclusion for small projects. There were comments that the rule as applied to

small projects was unduly burdensome and would discourage necessary repair operations. In response to these comments, EPA decided to exclude routine repair of less than 3 linear or 3 square feet of friable asbestos material from the final rule. Thus minor, routine repairs of pipe insulation by sealing or taping would not be covered by the rule.

This change will allow persons to make these minor, routine repairs without using type "C" respirators or conducting air sampling. Applying these requirements would unnecessarily discourage needed repairs of damaged asbestos materials. As noted above, this exclusion applies only to repair of less than 3 linear or 3 square feet of friable asbestos material. EPA considered the alternative of excluding "small" repair projects without setting a numerical limit. However, EPA decided that this approach would create enforcement difficulties since "small" is a very subjective term.

One comment noted that the proposed rule could be interpreted as covering the removal of friable asbestos material during sampling. This could discourage persons from sampling to identify potential asbestos hazards, thus delaying the abatement of some hazards. In response to this comment, EPA decided to clarify the rule to exclude any removal, enclosure, or encapsulation during sampling from coverage.

In the proposal, EPA requested comment on whether this rule should apply in States that do not have an OSHA-approved State plan but have comparable or more stringent regulations protection public employees who perform asbestos abatement work. EPA encouraged States with such regulations to inform EPA about the regulations during the comment period. Idaho, Kansas, Oklahoma, and Wisconsin brought their regulations to EPA's attention. EPA has decided that these regulations are comparable or more stringent that this rule and decided to exclude those States from coverage under this rule. A document which summarizes how EPA determined that these State regulations are comparable or more stringent appears in the record for this rule.

If any other State has a comparable or more stringent regulation now or adopts one in the future and wishes to be excluded from this rule, that State should send a copy of the regulation to EPA's Office of Toxic Substances (TS–792), 401 M Street St., SW., Washington, D.C. 20460 and request to be excluded from the rule. EPA will review the regulation and tentatively determine whether the regulation is comparable or more stringent that this rule. If EPA makes this tentative determination, EPA will propose an amendment to this rule, excluding that State from coverage. Interested persons could comment on the proposed exclusion during a period for public comment. After considering any comments, EPA could promulgate the final rule amendment.

In the proposal, EPA requested comment on the appropriate definition of asbestos. The definition in the proposal differs from OSHA's in that the EPA definition excludes non-asbestiform tremolite. EPA received one comment that it should adopt the OSHA definition and other comments that the EPA definition should be modified somewhat to make it more mineralogically correct. EPA has decided to retain the proposed definition in the final rule. This definition has been used by EPA in the past and is understood by the regulated community.

EPA also received comment on the definition of asbestos fibers. In the proposal, EPA defined the term as "asbestos fibers longer than 5 micrometers. EPA is adopting the same definition in this rule to be consistent with OSHA. OSHA adopted the definition because of practical difficulties in measuring concentrations of smaller fibers. EPA believes that smaller fibers present a health risk but agrees with OSHA that it is difficult to monitor for smaller fibers.

EPA received four comments questioning the proposed requirement of annual chest roentgenograms (X-rays) for persons exposed to asbestos at a level greater than 0.1 f/cc for a 7- or 8-hour TWA. Some comments stated that the diagnostic value of annual chest roentgenograms are outweighted by the risk associated with X-ray exposure. In response to these comments, EPA has modified the rule to make clear that chest roentgenograms are required only at the discretion of the physician.

EPA received comments concerning the reference in the proposed rule to respirators approved by the Bureau of Mines (BOM). The comment pointed out that while there may be respirators still in use which were originally approved by BOM, the Mine Safety and Health Administration (MSHA) has replaced BOM in this task. The final rule has been changed to make clear that respirators approved by the National Institute for Occupational Safety and Health, BOM, or MSHA may be worn.

EPA received one comment concerning a typographical error in the rule. The proposal incorrectly stated that "the employee shall provide two separate lockers. . . ." The final rule corrects this error and provides that "the employer shall provide two separate lockers. . . ."

EPA received comments that a PEL of 2.0 f/cc does not provide sufficient protection. As explained above, EPA is adopting the PEL in this rule to be consistent with OSHA, but expects to amend this rule to adopt a lower PEL in accordance with OSHA in the future. To ensure greater protection of abatement workers and building occupants during asbestos abatement than that now required by this rule, EPA strongly encourages all persons to follow EPA guidance materials and take additional steps to control exposure to asbestos. EPA encourages persons to contact a Regional Asbestos Coordinator or the TSCA Assistance Office to obtain EPA guidance documents and other technical assistance information. EPA also notes that many asbestos abatement projects subject to this rule are subject to the requirements of the National Emission Standard for Asbestos, 40 CFR 61.146, issued by EPA under the Clean Air Act.

VI. Regulatory Assessment

Under section 6(c)(1) of TSCA, EPA must consider the following factors when determining whether a chemical substance or mixture presents an unreasonable risk:

1. The effects of such substance or mixture on health and the magnitude of the exposure of human beings to such a substance or mixture.

2. The effects of such substance or mixture on the environment and the magnitude of the exposure of the environment to such substance or mixture.

3. The benefits of such substance or mixture for various uses and the availability of substitutes for such uses.

4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

After considering the above factors, EPA makes the following findings concerning the unregulated removal, enclosure, or encapsulation of friable asbestos material.

A. Health Effects and Magnitude of Exposure to Asbestos

1. *Health effects.* The following summarizes the health effects of asbestos. They are similar to those in the preamble to the proposed rule. EPA received no comments disagreeing with EPA's assessment of the health effects of asbestos. Detailed discussion and assessment of the health effects of asbestos may be found in the "Report to

the United States Consumer Product Safety Commission (CPSC), by the Chronic Hazard Advisory Panel on Asbestos" (CHAP) (Ref. 1), "Health Effects and Magnitude of Exposure" in EPA's "Support Document for Final Rule of Friable Asbestos-Containing Materials in School Buildings," (Ref. 4) and the "Report of the (National Research Council) Committee on Nonoccupational Health Risks of Asbestiform Fibers" (Ref. 6).

EPA finds that the adverse human health effects from exposure to asbestos are extremely serious. Asbestos is a known human carcinogen that also causes other lung diseases.

Asbestos has been thoroughly examined in numerous epidemiology studies. The life-threatening diseases that have been repeatedly identified are asbestosis, lung cancer, and mesothelioma. Also associated with asbestos exposure in some studies are cancers of the larynx, pharynx, gastrointestinal tract, kidney, and ovary and respiratory diseases such as pneumonia. Major health effects are discussed below.

Asbestosis, which involves fibrosis of lung and pleural tissue, is a serious chronic disease associated with exposure to asbestos. There is no effective treatment for asbestosis and it is often disabling or fatal. Asbestosis is diagnosed from findings which may include radiographic changes, breathlessness, and abnormal lung function. Since some clinical symptoms of asbestosis are similar to those of other fibrosing lung diseases, a history of occupational exposure to asbestos is often a key feature of its diagnosis. Asbestosis can appear and progress decades after exposure to asbestos fibers. This is partly true because some inhaled asbestos fibers remain in the body for the lifetime of a victim. Under working conditions where average fiber concentrations in the air were high (more than 10 fibers per cubic centimeter) asbestosis has accounted for more than 17 percent of observed deaths (Ref. 11). It is apparently less common than lung cancer or mesothelioma at exposures lower than the current OSHA workplace standard of 2.0 f/cc. Some recent data on the incidence of asbestosis appear compatible with a linear exposure-response relationship with no threshold (Ref. 12).

Lung cancer is currently responsible for the largest number of deaths from exposure to asbestos. It has been associated with exposure to all the principal commercial asbestos fiber types. Excess lung cancer has been documented in groups involved with the mining and milling of asbestos and the manufacture and use of asbestos products. Studies in which the extent of exposure can be approximated provide evidence that lung cancer increases linearly with both level and duration of exposure. Cigarette smoking and asbestos have a strong synergistic interaction in development of lung cancer. Asbestos exposure appears to multiply the underlying risk of lung cancer. Consequently, when exposed to asbestos, the risk of lung cancer for smokers (for whom the risk of lung cancer is already high) is much higher than that for nonsmokers exposed to asbestos.

Many human studies have also shown that exposures to asbestos produce mesotheliomas, which are cancers that occur as thick diffuse masses in the serous membranes (mesothelia) that line body cavities. Mesotheliomas occur in the pleura (the membrane that surrounds the lungs and lines the lung cavity) and the peritoneum (which surrounds the abdominal organs and lines the abdominal cavity). Both forms of mesothelioma are nearly always fatal within the first 2 years after diagnosis. Epidemiology studies suggest that the incidence of mesothelioma is related to dose and time from first exposure. Association of mesothelioma with smoking is weak or nonexistent. Asbestos fibers appear, by far, to be the most common cause of mesotheliomas.

In occupational studies where the primary route of exposure is through inhalation, lung cancer and mesotheliomas usually account for about 90 percent of the excess cancers seen among workers. However, as noted in the CHAP report (Ref. 1), a number of other cancers, principally of the gastrointestinal tract, have been associated with asbestos exposure. These are cancers of the larynx, pharynx, oral cavity, esophagus, stomach, colon, and rectum. Statistically significant excesses of cancers of the kidney and ovary have also been shown in some studies. In addition, the excess of cancers at all other sites combined is statistically significant in some studies.

The conclusions from epidemiology studies concerning the health effects of asbestos are also supported by results of laboratory studies. Animals treated with asbestos have shown increased incidence of fibrosis, lung cancer, and mesotheliomas. All commercial forms and several other types of asbestos are implicated from a variety of modes of exposure. Animal studies, however, have not shown an increased incidence of gastrointestinal or other cancers.

Most occupational studies have been conducted on populations exposed to high airborne concentrations of asbestos for long periods of time. However, short-term occupational exposures, have also been shown to increase the risk of lung cancer and mesothelioma (Ref. 9). In addition, there are many documented cases of mesothelioma linked to extremely brief exposure to high concentrations of asbestos or long-term exposure to low concentrations (Ref. 4).

Direct evidence of adverse health effects from nonoccupational asbestos exposure also exists. Persons who lived in the household of asbestos workers have developed pleural mesothelioma and signs of asbestosis (Ref. 10). A number of mesotheliomas have also been documented among populations whose only identified exposure was from living near asbestos mining areas, asbestos product factories, or shipyards where asbestos use had been very heavy (Ref. 4).

In addition to exposure to asbestos fibers in the air, the general population is also exposed through various oral sources, including drinking water containing asbestos. Because of the potential for oral exposure as well as the excess of gastrointestinal tract cancers that has frequently been found in occupational groups exposed to asbestos in the air, there has been much study of the possible health effects of ingestion of asbestos fibers. Despite those efforts, evidence showing health effects from ingestion is still ambiguous (Ref. 5).

2. *Cancer risk extrapolation.* As discussed above, numerous human studies have demonstrated that exposure to asbestos has increased the risk of cancer and asbestosis. This unit presents EPA's approach in estimating the cancer risk attributable to exposures during the removal, enclosure, or encapsulation of friable asbestos.

Since a number of epidemiology studies indicate a positive relationship between asbestos exposure and the risk of lung cancer, several models may be used to extrapolate from risk at high exposure to risk at lower exposure. The model that EPA believes is most consistent with available human and animal data is the linear nonthreshold dose/response model. This model assumes that: (1) Any exposure increases risk, and (2) the increase in risk is proportional to the background risk in the nonexposed population and to the level of exposure, defined as duration of exposure times concentration of asbestos fibers to which populations may be exposed.

The choice of the linear model appears reasonable since there is no evidence for a threshold level of asbestos exposure below which there is

no increased risk. It is further supported by evidence of cancers among populations whose asbestos exposure is believed to have been lower than levels reported in the epidemiology studies of asbestos workers mentioned above.

The model adopted by EPA to estimate excess mesothelioma incidence due to asbestos exposure relates disease incidence to dose and the time from first exposure (minus 10 years) raised to the third power. This model reflects a delay (or minimum latency period) of 10 years between first exposure and the likely earliest possible appearance of the disease. Both the lung cancer and mesothelioma models have also been adopted by OSHA (Ref. 12). The National Research Council Committee on Nonoccupational Health Risks of Asbestiform Fibers also adopted a similar linear nonthreshold model to estimate risk to nonoccupational populations from exposure to asbestos (Ref. 6). The derivation and validation of the models is discussed in detail in the CHAP report (Ref. 1) and in EPA's "Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products" (Ref. 3).

Although EPA believes that excess mortality from asbestosis and cancers other than lung cancer and mesothelioma could occur from exposure to asbestos released during asbestos abatement operations, EPA has not attempted to quantify that excess mortality since lung cancer and mesothelioma appear to present the greatest threats to human health at current exposure levels. Thus, the model could understate the risk to humans from asbestos exposure.

The risk of asbestos-induced disease may be modified by several factors. As mentioned in the earlier discussion on lung cancer, smoking drastically increases the risk of developing lung cancer from exposure to asbestos. Because of their lower underlying risk, the absolute increase of incidence of lung cancer in nonsmokers is about one-tenth of that in smokers. However, complete control of the smoking factor (if possible) would leave a substantial health risk since the risk of mesothelioma (which is apparently unaffected by smoking) and the risk of lung cancer to nonsmokers would still remain.

Another factor that may affect the risk of asbestos-induced disease is the possible differences in biological potency among the different fiber types. The National Research Council (Ref. 6) studied this issue and concluded:

> Results of studies of various groups of workers indicate that it is extremely difficult to assess the role of fiber type (e.g., chrysotile or crocidolite) in determining the risk for developing either lung cancer or mesothelioma. Analysis of the epidemiological studies is complicated because of variations in type of industry, the diverse fiber characteristics within an industry, and the usual inadequacy of exposure data. Some scientists have interpreted the available epidemiological data to indicate that chrysotile asbestos, the asbestos type most commonly used in the United States, is less hazardous than the other types of asbestos, especially crocidolite. Such arguments have been used in the United Kingdom and other countries to rationalize different regulatory controls for crocidolite and chrysotile. However, in view of the laboratory evidence and great uncertainty about the nature of the fibers of asbestos to be found in nonoccupational exposure situations, the committee decided not to differentiate among them in the quantitative risk assessment. Furthermore, some of the apparent discrepancies may be explained by differences in physical properties of the fibers, their concentrations, and their characteristics in the different environments. These possibilities need further testing.

In view of this uncertainty about the relative potency of the various asbestos types and in view of the well-documented health hazard of the most common commercial form of asbestos, EPA has concluded that it is prudent to treat all asbestos fiber types as having equivalent biological activity.

Fiber morphology has also been suggested as a factor that may affect incidence of asbestos-induced disease. Animal studies in which asbestos fibers were applied by injection or implantation suggest that longer and finer fibers are more carcinogenic than shorter and coarser fibers. This has not, however, been confirmed by inhalation studies. EPA has not differentiated among fiber sizes in its assessment of the potential risk of asbestos. First, asbestos fibers released during asbestos abatement projects consist of a great range of dimensions, including those suggested as most dangerous. Second, it has not been clearly shown that short fibers pose a significantly smaller risk. No dimensional threshold for potency has been established.

3. *Magnitude of human exposure.* Persons can be exposed to high levels of airborne asbestos in or near the work area during asbestos abatement projects. Peak exposure during the removal of asbestos insulation have been measured at levels ranging from 4.5 f/cc to 82.2 f/cc. Mean exposure levels during the dry removal of an asbestos-containing ceiling have been measured at 42.2 f/cc. Mean exposure levels during the wet removal of an asbestos-containing ceiling have been measured at 23.1 f/cc. Mean exposure levels during removal of an asbestos-containing ceiling using water and a surfactant have been measured at 8.1 f/cc (Refs. 2 and 13). OSHA has estimated that average airborne concentrations in the dry wall removal, renovation, and demolition industry are 20 f/cc (Ref. 12).

There may also be much exposure to asbestos during the encapsulation and enclosure of friable asbestos material. Using an electron microscope, levels of 40, 380, 390, and 8,740 nanograms per cubic meter were found in samples taken in the work area with a mobile pump during painting with an encapsulant. Samples taken by personal pumps worn by two painters during encapsulation showed very low levels in one case and levels of 1,000, 1,700, 2,300, and 13,000 nanograms per cubic meter in the other case (Ref. 14). EPA has received anecdotal evidence that there may be much exposure to asbestos during enclosure of friable asbestos material.

Based on available exposure information, EPA estimated in the proposal that unregulated dry removal of asbestos results in exposure levels of 24.0 f/cc in the work area during abatement, 1.6 f/cc outside the work area during abatement and 0.8 f/cc outside the work area post abatement. EPA estimated that unregulated wet removal of asbestos results in exposure levels of 18.0 f/cc in the work area during abatement, 0.9 f/cc outside the work area during abatement, and 0.5 f/cc in the building post abatement (Ref. 13). Many of the estimates were based on data reported in studies, while others were essentially assumed due to a lack of data (Ref. 13). EPA received no comments on these estimates.

EPA estimated in the proposal that this rule would reduce the concentrations of airborne asbestos to 11.9 f/cc in the work area during abatement, 0.3 f/cc outside the work area during abatement, and 0.5 f/cc in the building post abatement (Ref. 13). These figures are estimated averages for all abatement projects. Individual projects are likely to have different concentrations. EPA received no comments on these estimates.

EPA estimated in the proposal that about 450 abatement workers per year would be covered by this rule. This was based on an estimate of the number of abatement projects each year and an estimate of the percentage of those projects in which State and local employees are used. The number of employees covered by the rule during repair and maintenance work involving the removal, enclosure or encapsulation

of friable asbestos material was not estimated. One comment asserted that as many as 75,000 State and local workers could be covered during these activities. EPA believes that this estimate is high.

In the proposal, EPA estimated that asbestos abatement workers would be exposed to asbestos during abatement for 3 to 6 days a year. In addition, other persons would be exposed to asbestos as a result of asbestos abatement activities. EPA estimated that about 1,250 other State and local public employees, such as public school teachers, other public school personnel, public hospital staff, and State and local government office workers, would be exposed during abatement and about 3,700 employees would be exposed post abatement. EPA also estimated that about 400 other building occupants such as school children and hospital patients and visitors would be exposed during abatement and about 38,600 other occupants and visitors would be exposed post abatement (Ref. 13). EPA received comments that it underestimated the number of asbestos abatement projects covered by this rule. If these comments are accurate, then this rule will potentially protect even more persons.

B. Environmental Effects

Section 6(c) of TSCA requires that EPA state the relevant environmental factors and key considerations which form the basis for regulatory action under section 6(a). The unreasonable risk finding of this rule is based solely on risks to human health since these risks are by far the most serious consequence of unregulated removal, enclosure, or encapsulation of friable asbestos material and are sufficient to support this rule. EPA received no comments on this point.

C. Benefits of Asbestos Products and Availability of Substitutes

EPA finds that the benefits of the asbestos-containing products affected by this rule are minimal. This rule applies only when persons have already decided to remove, enclose, or encapsulate friable asbestos material. These people presumably will have already determined that there are no benefits in using the asbestos-containing material in its present condition. In addition, there are adequate substitutes for the asbestos products that are being removed from buildings. EPA received no comments on this point.

D. Economic Effects of the Rule

This portion of the preamble presents EPA's determination of the "reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health" as required by section 6(c)(1)(D) of TSCA.

EPA estimates that this rule will increase the cost of asbestos abatement to some extent. In the proposal, EPA estimated that the rule would increase the cost of typical abatements as follows:

Project	Without rule	With rule	Increase	Percent increase
School	$12,900	$15,300	$2,400	18
Office building	18,800	22,000	3,200	17
Hospital	58,500	65,800	7,300	12
Boiler room	3,700	4,900	1,200	32
Boiler pipes	1,700	2,600	900	54

In the proposal, EPA estimated that the rule would increase the costs of asbestos abatement a total of about $730,000. This figure represents the present value of costs incurred over the next 15 years, assuming that all friable asbestos is abated. EPA also estimated that this rule would avoid about 200 cancer cases. This is about $3,650 per cancer case avoided.

EPA received comments indicating that the total costs of the rule were understated because EPA underestimated the number of asbestos abatement projects covered by this rule. EPA acknowledges that the estimate of asbestos abatement projects may have been low because it did not take into account many maintenance and repair operations. However, EPA has excluded some of these small projects from coverage in the final rule. In addition, even if the number of asbestos abatement projects is higher than estimated by EPA, both the costs of the rule and the number of cancer cases avoided would have been underestimated in roughly the same proportion in the proposal. Thus, this possible underestimate would not change the cost per cancer case avoided by the rule.

This rule will not have a direct impact on small business since it applies only to those public employees not covered by the OSHA Asbestos Standard. However, by establishing regulatory requirements for public employees similar to those of private employees under OSHA jurisdiction, the rule will eliminate cost advantages that may encourage the use of public employees rather than private contractors for asbestos abatement. This rule may, therefore, bring about increased use of private contractors, some of which are small businesses. This rule could have an impact on small government entities because it would increase the cost of performing asbestos abatement activities using public employees. However, the rule will not increase the cost of using contractors to perform asbestos abatement and would not require any government entity to undertake asbestos abatement activities.

EPA does not believe that this rule will restrict technological innovation. The rule allows sufficient flexibility for the development of new technology concerning asbestos abatement.

E. Other EPA Statutes

Section 6(c) of TSCA requires that if EPA determines that a risk of injury to health or the environment could be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA. EPA may not promulgate a rule under section 6(a) of TSCA unless EPA finds it is in the public interest to protect against the risk by action under TSCA. EPA finds that no other law administered by EPA will eliminate or reduce the risks to the workers associated with the removal, renovation, or encapsulation of asbestos to a sufficient extent.

Several EPA statutes have been used to limit asbestos exposure. In 1973, EPA used the authority of the Clean Air Act (CAA) to list asbestos as a hazardous air pollutant, establish a "no visible" emission standard for manufacturers, and ban the use of spray-applied asbestos-containing material as insulation in buildings. The regulation was published in the **Federal Register** of April 6, 1973 (38 FR 8826). EPA amended this regulation in 1975 to ban asbestos-containing pipe lagging, by a rule published in the **Federal Register** of October 12, 1975 (40 FR 48292); and in 1978 extended the ban to all uses of sprayed-on asbestos by a rule published in the **Federal Register** of June 19, 1978 (43 FR 26372). The CAA rule also regulates operations involving the demolition or renovation of buildings containing friable asbestos and the disposal of wastes generated by such operations.

However, the CAA has limitations. The CAA does not apply directly to the protection of workers exposed to indoor air. Consequently, any possible additional use of that statute could leave many workers exposed to indoor situations of inadequate protection.

An additional EPA statute that could be used to limit asbestos exposure is the Resource Conservation and Recovery Act (RCRA). Under RCRA, EPA could list asbestos as a hazardous waste and

subject asbestos waste to general RCRA requirements designed to reduce exposure. However, such action under RCRA would reduce exposure only when the wastes from asbestos removal are ultimately placed in disposal facilities. It would not reduce exposure during the actual removal, enclosure, or encapsulation of asbestos products. Therefore, EPA finds that the risk from asbestos abatement projects cannot be eliminated or reduced to a sufficient extent by actions taken under another statute administered by EPA.

F. Other Options Considered

Section 6 of TSCA requires that EPA apply the least burdensome requirements to reduce an unreasonable risk. EPA considered the following options for reducing the risks associated with the removal, enclosure, or encapsulation of asbestos without any regulatory controls beyond those required by the National Emission Standard for Asbestos.

1. *Take no regulatory action under TSCA; instead provide the public with information and technical assistance.* Under this option, EPA would take no regulatory action, beyond that already taken as part of the National Emission Standard for Asbestos; but would instead provide the public with information and technical assistance. EPA is already increasing the information and technical assistance it provides the public. Persons could use that information to reduce the risk to public employees who perform asbestos abatement work during the removal, enclosure, or encapsulation of asbestos.

This approach would minimize the burden caused by regulatory action. However, this option is an inadequate response given the high risk to abatement workers associated with the removal, enclosure, or encapsulation of asbestos following only the requirements of the National Emission Standard for Asbestos. The National Emission Standard for Asbestos was designed to limit the release of asbestos to the ambient air and only incidentally protects abatement workers inside a building.

2. *Take no regulatory action under TSCA; instead defer to the States.* Under this option, EPA would take no regulatory action beyond that already taken as part of the National Emission Standard for Asbestos but would instead provide the States with information and technical assistance so that States can adopt regulations to protect public employees who perform asbestos abatement work.

This approach would minimize the burden caused by Federal regulatory action. However, this option is an inadequate response since a number of States have not taken action in this area in the past and may not take action in the future. Still, EPA encourages States to take action to protect such public employees with requirements more stringent than those in this rule. As stated earlier, employees exposed to asbestos at the level permitted by this rule still face a risk to health.

3. *Propose a rule which provides greater protection than the current OSHA Asbestos Standard.* OSHA has recognized that its current Asbestos Standard is inadequate and has begun rulemaking to adopt a new standard. EPA could issue a rule closer to the proposed OSHA standard or closer to the recommendations for worker protection in EPA's technical guidance documents. As stated earlier, EPA decided to follow the current OSHA Asbestos Standard closely to maintain consistency among Federal agencies. However, EPA expects to adopt a rule very similar to the final OSHA Asbestos Standard after OSHA issues that rule. This will ensure that all public and private sector employees who take part in asbestos abatement work enjoy similar levels of protection.

G. Analysis Under Section 9(a) of TSCA

Section 9(a) of TSCA requires EPA to review other Federal authorities not administered by EPA to determine whether action under those authorities may prevent or reduce to a sufficient extent such risks. EPA has reviewed other Federal authorities. The only statute not administered by EPA that could reduce such risks is the OSH Act. However, this rule covers only persons not covered by the OSHA Asbestos Standard. OSHA currently has no statutory authority to cover public employees in a State without an OSHA-approved State plan and 27 States do not have an approved plan. Thus, EPA cannot determine that there is a statute administered by another Federal agency that can prevent or reduce the risk presented to persons not covered by the OSHA Asbestos Standard during the removal, enclosure, or encapsulation of friable asbestos.

VII. Finding of Unreasonable Risk

EPA has weighed the health risks from unregulated asbestos abatement against the costs attributable to the proposed regulation. EPA estimates that this rule would avoid about 200 cancer cases, among abatement workers, other employees in buildings where abatement occurs, and visitors to such buildings while costing about $730,000 over 15 years. This is about $3,650 per cancer case avoided. Even if EPA underestimated the number of asbestos abatement projects covered by this rule, the cost per cancer case avoided would be about the same. EPA has concluded that the avoidance of these premature deaths substantially outweighs the costs of the control measures required.

Therefore, EPA finds that unregulated removal, enclosure, or encapsulation of friable asbestos material presents an unreasonable risk to human health and proposes to require that certain measures be taken to reduce the risk faced by asbestos abatement workers and persons using and visiting buildings during and after asbestos abatement activities. The finding is based on the following points:

1. The health effects from asbestos exposure are very serious. Asbestos is a demonstrated human carcinogen. The cancers caused by asbestos are usually fatal and cause much pain and suffering.

2. Available evidence supports the conclusion that there is no safe level of exposure to asbestos. This conclusion is consistent with present theory of cancer etiology and is further supported by the many documented cases where low or short-term exposure has been shown to cause asbestos-related disease.

3. Models developed to estimate the relative risk of developing cancer from exposure to asbestos show a linear dose-response relationship. Based on data from epidemiology studies, these models predict that humans exposed to even very low levels of asbestos incur some risk.

4. Many persons are involved in asbestos abatement activities, but are not protected by the OSHA Asbestos Standard.

5. Persons can be exposed to high levels of airborne asbestos if they conduct asbestos abatement without any exposure controls.

6. If persons attempt to abate asbestos hazards, but do so incorrectly, there may be very high levels of exposure to asbestos on the part of abatement workers, other employees who work in the building, and visitors to the building. These levels may far exceed the levels of exposure permitted by the current OSHA Asbestos Standard. For example, in schools that incorrectly abate asbestos hazards, school teachers and other school employees and school children could be exposed as well as abatement workers. State and local public employees could potentially take part in asbestos abatement activities in all State and local public buildings in the States not covered by OSHA State plans.

7. The estimated incremental economic costs of this rule are minimal in view of the number of cancers that may be avoided by the rule.

VIII. Enforcement

Section 15 of TSCA makes it unlawful to fail or refuse to comply with any provision of a rule promulgated section 6 of TSCA. Therefore, faulure to comply with this rule would be a violation of section 15 of TSCA. In addition, section 15 of TSCA makes it unlawful for any person to: (1) Fail or refuse to establish and maintain records as required by this rule; (2) fail or refuse to permit access to or copying or records, as required by TSCA; or (3) fail or refuse to permit entry or inspection as required by section 11 of TSCA.

Violators may be subject to both civil and criminal liability. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation. Each day of operation in violation of this rule could constitute a separate violation. Knowing or willful violations of this rule could lead to the imposition or criminal penalties of up to $25,000 for each day of violation and imprisonment for up to 1 year. In additional, other remedies are available to EPA under sections 7 and 17 of TSCA, such as seeking an injunction to restrain violations of this rule.

IX. Confidentiality

A person may assert a claim of confidentiality for any information, including public comments, submitted to EPA in connection with this rule. Any person who submits a confidential public comments must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons would claim information confidential by circling, bracketing, or underlining it and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR Part 2, Subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

X. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–62044). A public version of the record, without any confidential business information, is available to the public in the Office of Toxic Substances Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. E–107, 401 M St., SW., Washington, D.C.

The record includes information considered by EPA in developing this rule. The record now includes the following categories of information:

1. **Federal Register** notices.
2. Support documents.
3. Reports.
4. Memoranda and letters.

The record also includes by reference the rulemaking record compiled by OSHA as part of the revision of the OSHA Asbestos Standard. Persons may point out any errors or omissions in the record by May 9, 1986.

XI. References

(1) USCPSC. Reports to the U.S. Consumer Product Safety Commission by the Chronic Hazard Advisory Panel on Asbestos. July 1983.

(2) USEPA, OPTS, OTS. Exposure Assessment for Asbestos. Draft January 9, 1984.

(3) USEPA, OPTS, OTS. Regulatory Impact Analysis of Controls on Asbestos and Asbestos Products. Draft March 1985.

(4) USEPA, OPTS, OTS. Support Document for Final Rule on Friable Asbestos-Containing Materials in School Buildings-Health Effects and Magnitude of Exposure. January, 1982.

(5) National Research Council. "Asbestos" In: *Drinking Water and Health.* Vol. 3. National Academy Press. Washington, D.C. (1982): 223–263.

(6) National Research Council. "Nonoccupational Health Risks of Asbestiform Fibers." National Academy Press. Washington, D.C. 1984.

(7) NIOSH-OSHA Asbestos Work Group. Workplace Exposure to Asbestos: "Review and Recommendations." DHHS (NIOSH) Publication No. 81–103, U.S. Government Printing Office, Washington, D.C. 20402. (1980).

(8) OSHA. "Quantitative Risk Analysis for Asbestos-Related Cancers: A Preliminary Report." (1983).

(9) Seidman, H., Selikoff, I.J., Hammond, E.C., "Short-Term Observation." In: "Annals of the New York Academy of Science," 330 (1979): 61–89.

(10) Selikoff, I.J. Anderson, H.A., Seidman, H. "Asbestos Disease Among Household Contacts of Asbestos Workers." In: "Disability Compensation for Asbestos-Associated Disease in the U.S.," edited by I.J. Selikoff. Environmental Sciences Laboratory, Mount Sinai School of Medicine of the City University of New York. (1982): 73–76.

(11) Selikoff, I.J., Hammond, E.C., Seidman, H., "Mortality Experience of Insulation Workers in the U.S. and Canada, 1943–1976." In: "Annals of the New York Academy of Science," 330 (1979): 91–116.

(12) USDOL, OSHA. "Occupational Exposure to Asbestos; Proposed Rule and Notice of Hearing. (April 10, 1984; 49 FR 14116)."

(13) USEPA, OPTS, OTS. Asbestos Abatement Rules: A Preliminary Cost-Effectiveness Analysis. Revised Draft Report May, 1985.

(14) USEPA, OPTS, OTS Evaluation. of Asbestos Techniques: Encapsulation. Draft Report April 1985.

XII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA prepared a Cost-Effectiveness Analysis. The Analysis estimated that this rule would cost about $730,000 over 15 years, while avoiding about 200 fatal cancer cases. This is a cost of about $3,650 per cancer case avoided. As shown in Unit V above, EPA believes that these costs are reasonable. Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more and it will not have a significant effect on competition, costs, or prices.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

EPA has analyzed the economic impact of this proposed rule on small businesses. A summary of EPA's analysis appears in Unit VI.D.

C. Paperwork Reduction Act

The information collection requirements in this rule were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork and Reduction Act of 1980, 44 U.S.C. 3501 et seq. (Control No. 2070–0072). EPA received comments that 10-day advance notice of asbestos abatement projects is burdensome in particular instances such as emergency repairs. EPA has responded to those comments by not requiring 10-day advance notice of emergency projects. Instead, those projects must be reported to EPA as soon as possible. In addition, EPA has excluded small asbestos abatement projects from the reporting requirements of this rule.

List of Subjects in 40 CFR Part 763

Environmental protection, Hazardous substances, Recordkeeping and reporting requirements, Asbestos.

Dated: April 17, 1986.

Lee M. Thomas,

Administrator.

PART 763—[AMENDED]

Therefore, 40 CFR Part 763 is amended as follows:

1. The authority citation for Part 763 continues to read as follows:

Authority: 15 U.S.C. 2605 and 2607(c).

2. Subpart G is revised to read as follows:

Subpart G—Asbestos Abatement Projects

Subpart G—Asbestos Abatement Projects

§ 763.120 Scope.

(a) This Part establishes requirements which must be followed during asbestos abatement projects by employers of State and local government employees not covered by the Asbestos Standard of the Occupational Safety and Health Administration (OSHA), 29 CFR 1910.1001, an Asbestos Standard adopted by a State as part of a State plan approved by OSHA under section 18 of the Occupational Safety and Health Act, or a State asbestos regulation in Idaho, Kansas, Oklahoma, and Wisconsin. The rule covers those employees who take part in asbestos abatement work.

(b) [Reserved]

§ 763.121 Regulatory requirements.

(a) *Definitions.* For the purpose of this section:

(1) "Asbestos" means the asbestiform varieties of chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); tremolite; anthophyllite, and actinolite.

(2) "Asbestos abatement project" means any activity involving the removal, enclosure, or encapsulation of friable asbestos material, except removal, enclosure, or encapsulation during sampling or routine repair of less than either 3 linear feet or 3 square feet of friable asbestos material.

(3) "Asbestos fibers" means asbestos fibers longer than 5 micrometers.

(4) "Emergency project" means a project involving the removal, enclosure, or encapsulation of friable asbestos-containing material that was not planned but results from a sudden unexpected event.

(5) "Employer" means the public department, agency, or entity which hires an employee. The term includes, but is not limited to, any State, County, City, or other local governmental entity which operates or administers schools, a department of health or human services, a library, a police department, a fire department, or similar public service agencies or offices.

(6) "Friable asbestos material" means any material containing more than 1 percent asbestos by weight which, when dry, may be crumbled, pulverized or reduced to powder by hand pressure.

(b) *Permissible exposure to airborne concentrations of asbestos fibers.*

(1) [Reserved]

(2) *Standard effective on June 9 1986.* The 8-hour time-weighted average airborne concentrations of asbestos fibers to which any employee may be exposed shall not exceed two fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (3) of this section.

(3) *Ceiling concentration.* No employee shall be exposed at any time to airborne concentrations of asbestos fibers in excess of 10 fibers, longer than 5 micrometers, per cubic centimeter of air, as determined by the method prescribed in paragraph (e) of this section.

(c) *Methods of compliance*—(1) *Engineering methods*—(i) *Engineering controls.* Engineering controls, such as, but not limited to, isolation, enclosure, exhaust ventilation, and dust collection, shall be used to meet the exposure limits prescribed in paragraph (b) of this section.

(ii) *Local exhaust ventilation.* (A) Local exhaust ventilation and dust collection systems shall be designed, constructed, installed, and maintained in accordance with the American National Standard Fundamentals Governing the Design and Operation of Local Exhaust Systems, ANSI Z9.2–1979 (Revision of ANSI Z9.2–1971), which is incorporated by reference herein.

(B) ANSI Z9.2–1979 is available for inspection at the Office of the Federal Register Information Center, Rm. 8301, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the **Federal Register.** Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107, 401 M St., SW., Washington, DC 20460, and from the American National Standards Institute, 1430 Broadway, New York, NY 10018 (212–354–3473).

(iii) *Particular tools.* All hand-operated and power-operated tools which may produce or release asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, such as, but not limited to, saws, scorers, abrasive wheels, and drills, shall be provided with local exhaust ventilation systems in accordance with paragraph (c)(1)(ii) of this section.

(2) *Work practices*—(i) *Wet methods.* Insofar as practicable, asbestos shall be handled, mixed, applied, removed, cut, scored, or otherwise worked in a wet state sufficient to prevent the emission of airborne fibers in excess of the exposure limits prescribed in paragraph (b) of this section, unless the usefulness of the product would be diminished thereby.

(ii) *Particular products and operations.* No asbestos cement, mortar, coating, grout, plaster, or similar material containing asbestos shall be removed from bags, cartons, or other containers in which they are shipped, without being either wetted, or enclosed, or ventilated so as to prevent effectively the release of airborne asbestos fibers in excess of the limits prescribed in paragraph (b) of this section.

(iii) *Demolition or removal.* Employees engaged in removal or demolition of pipes, structures, or equipment covered or insulated with asbestos, and in the removal or demolition of asbestos insulation or coverings shall be provided with respiratory equipment in accordance with paragraph (d)(2)(iii) of this section and with special clothing in accordance with paragraph (d)(3) of this section.

(d) *Personal protection equipment.* (1) Compliance with the exposure limits prescribed by paragraph (b) of this section may not be achieved by the respirators except:

(i) During the time period necessary to install the engineering controls and to institute the work practices required by paragraph (c) of this section;

(ii) In work situations in which the methods prescribed in paragraph (c) of this section are either technically not feasible or feasible to an extent insufficient to reduce the airborne concentrations of asbestos fibers below the limits prescribed by paragraph (b) of this section; or

(iii) In emergencies.

(2) Where a respirator is permitted by paragraph (d)(1) of this section, it shall be selected from among those approved by the Mine Safety and Health

Administration, Department of Labor, the Bureau of Mines, Department of the Interior, or the National Institute for Occupational Safety and Health, Department of Health and Human Services, under the provisions of 30 CFR Part 11 and shall be used in accordance with paragraphs (d)(2) (i), (ii), (iii), and (iv) of this section.

(i) *Air purifying respirators.* A reusable or single use air purifying respirator, or a respirator described in paragraph (d)(2) (ii) or (iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed no more than 10 times those limits.

(ii) *Powered air purifying respirators.* A full facepiece powered air purifying respirator, or a powered air purifying respirator, or a respirator described in paragraph (d)(2)(iii) of this section, shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average concentrations of asbestos fibers are reasonably expected to exceed 10 times, but not 100 times, those limits.

(iii) *Type "C" supplied-air respirators, continuous flow or pressure-demand class.* A type "C" continuous flow or pressure-demand, supplied-air respirator shall be used to reduce the concentrations of airborne asbestos fibers in the respirator below the exposure limits prescribed in paragraph (b) of this section, when the ceiling or the 8-hour time-weighted average airborne concentrations of asbestos fibers are reasonably expected to exceed 100 times those limits.

(iv) *Establishment of a respirator program.* (A) The employer shall establish a respirator program in accordance with the requirements of the American National Standard Practices for Respiratory Protection, ANSI Z88.2–1980 (Revision of ANSI Z88.2–1969), which is incorporated by reference herein.

(B) ANSI Z88.2–1980 is available for inspection at the Office of the Federal Register Information Center, Rm. 8301, 1100 L St., NW., Washington, DC 20408. This incorporation by reference was approved by the Director of the Office of the Federal Register. This material is incorporated as it exists on the date of approval and a notice of any change in this material will be published in the Federal Register. Copies of the incorporated material may be obtained from the Document Control Officer (TS–793), Office of Toxic Substances, EPA, Rm. 107,401 M St., SW., Washington, DC 20460, and from the American National Standards Institute, 1430 Broadway, New York, NY 10018, (212–354–3473).

(C) No employee shall be assigned to tasks requiring the use of respirators if, based upon his most recent examination, an examining physician determines that the employee will be unable to function normally wearing a respirator, or that the safety or health of the employee or other employees will be impaired by his use of a respirator. Such employee shall be rotated to another job or given the opportunity to transfer to a different position whose duties he is able to perform with the same employer, in the same geographical area and with the same seniority, status, and rate of pay he had just prior to such transfer, if such a different position is available.

(3) Special clothing: The employer shall provide, and require the use of, special clothing, such as coveralls or similar whole body clothing, head coverings, gloves and foot coverings for any employee exposed to airborne concentrations of asbestos fibers, which exceed the ceiling level prescribed in paragraph (b) of this section.

(4) Change rooms:

(i) At any fixed place of employment exposed to airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section, the employer shall provide change rooms for employees working regularly at the place.

(ii) Clothes lockers: The employer shall provide two separate lockers or containers for each employee, so separated or isolated as to prevent contamination of the employee's street clothes from his work clothes.

(iii) Laundering:

(A) Laundering of asbestos-contaminated clothing shall be done so as to prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(B) Any employer who gives asbestos-contaminated clothing to another person for laundering shall inform such person of the requirement in paragraph (d)(4)(iii)(A) of this section to effectively prevent the release of airborne asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section.

(C) Contaminated clothing shall be transported in sealed impermeable bags, or other closed, impermeable bags, or other closed, impermeable containers, and labeled in accordance with paragraph (g) of this section.

(e) *Method of measurement.* All determinations of airborne concentrations of asbestos fibers shall be made by the membrane filter method at 400–450x (magnification)(4 millimeter objective) with phase contrast illumination.

(f) *Monitoring*—(1) *Initial determinations.* Every employer shall cause every place of employment where asbestos fibers are released to be monitored in such a way as to determine whether every employee's exposure to asbestos fibers is below the limits prescribed in paragraph (b) of this section. If the limits are exceeded, the employer shall immediately undertake a compliance program in accordance with paragraph (c) of this section.

(2) *Personal monitoring.* (i) Samples shall be collected from within the breathing zone of the employees, on membrane filters of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of employees.

(3) *Environmental monitoring.* (i) Samples shall be collected from areas of a work environment which are representative of the airborne concentrations of asbestos fibers which may reach the breathing zone of employees. Samples shall be collected on a membrane filter of 0.8 micrometer porosity mounted in an open-face filter holder. Samples shall be taken for the determination of the 8-hour time-weighted average airborne concentrations and of the ceiling concentrations of asbestos fibers.

(ii) *Sampling frequency and patterns.* After the initial determinations required by paragraph (f)(1) of this section, samples shall be of such frequency and pattern as to represent with reasonable accuracy the levels of exposure of the employees.

(4) *Employee observation of monitoring.* Affected employees, or their representatives, shall be given a reasonable opportunity to observe any monitoring required by this paragraph and shall have access to the records thereof.

(g) *Caution signs and labels*—(1) *Caution signs*—(i) *Posting.* Caution signs

shall be provided and displayed at each location where airborne concentrations of asbestos fibers may be in excess of the exposure limits prescribed in paragraph (b) of this section. Signs shall be posted at such a distance from such a location so that an employee may read the signs and take necessary protective steps before entering the area marked by the signs. Signs shall be posted at all approaches to areas containing excessive concentrations of airborne asbestos fibers.

(ii) *Sign specifications.* The warning signs required by paragraph (g)(1)(i) of this section shall conform to the requirements of 20" x 14" vertical format signs specified in 29 CFR 1910.145(d)(4), and to this paragraph (g)(1)(ii). The signs shall display the following legend in the lower panel, with letter sizes and styles of a visibility at least equal to that specified in this paragraph (g)(1)(ii).

Legend	Notation
Asbestos	1" Sans Serif, Gothic or Block.
Dust Hazard	¾" Sans Serif, Gothic or Block.
Avoid Breathing Dust	¼" Gothic.
Wear Assigned Protective Equipment.	¼" Gothic.
Do Not Remain In Area Unless Your Work Requires it.	¼" Gothic.
Breathing Asbestos Dust May be Hazardous To Your Health.	14 Point Gothic.

Spacing between lines shall be at least equal to the height of the upper of any two lines.

(2) *Caution labels*—(i) *Labeling.* Caution labels shall be affixed to all raw materials, mixtures, scrap, waste, debris, and other products containing asbestos fibers, or to their containers, except that no label is required where asbestos fibers have been modified by a bonding agent, coating, binder, or other material so that during any reasonably foreseeable use, handling, storage, disposal, processing, or transportation, no airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section will be released.

(ii) *Label specifications.* The caution labels required by paragraph (g)(2)(i) of this section shall be printed in letters of sufficient size and contrast to be readily visible and legible. The label shall state:

CONTAINS ASBESTOS FIBERS
AVOID CREATING DUST
BREATHING ASBESTOS DUST MAY CAUSE SERIOUS BODILY HARM

(h) *Housekeeping*—(1) *Cleaning.* All external surfaces in any place of employment shall be maintained free of accumulations of asbestos fibers if, with their dispersion, there would be an excessive concentration.

(2) *Waste disposal.* Asbestos waste, scrap, debris, bags, containers, equipment, and asbestos-contaminated clothing, consigned for disposal, which may produce in any reasonably foreseeable use, handling, storage, processing, disposal, or transportation airborne concentrations of asbestos fibers in excess of the exposure limits prescribed in paragraph (b) of this section shall be collected and disposed of in sealed impermeable bags, or other closed, impermeable containers.

(i) *Recordkeeping*—(i) *Exposure records.* Every employer shall maintain records of any personal or environmental monitoring required by this section. Records shall be maintained for a period of at least 20 years and shall be made available upon request to the Environmental Protection Agency, the Assistant Secretary of Labor for Occupational Safety and Health, the Director of the National Institute for Occupational Safety and Health, and to authorized representatives of either.

(2) *Employee access.* Every employee and former employee shall have reasonable access to any record required to be maintained by paragraph (i)(1) of this section, which indicates the employee's own exposure to asbestos fibers.

(3) *Employee notification.* Any employee found to have been exposed at any time to airborne concentrations of asbestos fibers in excess of the limits prescribed in paragraph (b) of this section shall be notified in writing of the exposure as soon as practicable but not later than 5 days of the finding. The employee shall also be timely notified of the corrective action being taken.

(j) *Medical Examinations*—(1) *General.* The employer shall provide or make available at his cost, medical examinations relative to exposure to asbestos required by this paragraph.

(2) *Preplacement.* The employer shall provide or make available to each of his employees, within 30 calendar days following his first employment in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination, which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches) at the discretion of the physician, a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(3) *Annual examinations.* On or before April 27, 1986, and at least annually thereafter, every employer shall provide, or make available, comprehensive medical examinations to each of his employees engaged in occupations exposed to airborne concentrations of asbestos fibers. Such annual examination shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches) at the discretion of the physician, a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(4) *Termination of employment.* The employer shall provide, or make available, within 30 calendar days before or after the termination of employment of any employee engaged in an occupation exposed to airborne concentrations of asbestos fibers, a comprehensive medical examination which shall include, as a minimum, a chest roentgenogram (posterior-anterior 14 x 17 inches) at the discretion of the physician, a history to elicit symptomatology of respiratory disease, and pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second ($FEV_{1.0}$).

(5) *Recent examinations.* No medical examination is required of any employee, if adequate records show that the employee has been examined in accordance with this paragraph within the past 1-year period.

(6) *Medical records*—(i) *Maintenance.* Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be retained by employers for at least 20 years.

(ii) *Access.* The contents of the records of the medical examinations required by this paragraph shall be made available, for inspection and copying, to the Environmental Protection Agency, the Assistant Secretary of Labor for Occupational Safety and Health, the Director of NIOSH, to authorized physicians and medical consultants of either of them, and, upon the request of an employee or former employee, to his physician. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer of the examined employee all the information specifically required by this paragraph, and any other medical information related to occupational exposure to asbestos fibers.

§ 763.124 Reporting.

(a) Employers subject to this rule must report to the Regional Asbestos Coordinator for the EPA Region in which the asbestos abatement project is located at least 10 days before they

begin any asbestos abatement project except one that involves less than either 3 linear feet or 3 square feet of friable asbestos material and is covered by this rule, other than an emergency project. Employers must report any emergency project covered by this rule as soon as possible but in no case more than 48 hours after the project begins. A list of the EPA Regional Offices is given under 40 CFR 1.7(b).

(b) The report must include:

(1) The employer's name and address.

(2) The location, including street address, of the asbestos abatement project.

(3) The scheduled starting and completion dates for the asbestos abatement project.

(c) If a report is mailed to EPA, the report must be postmarked at least 10 days before the asbestos abatement project begins unless the report is for an emergency project. In such a case, the report must be postmarked as soon as possible but in no case more than 48 hours after the project begins.

(d) Employers do not have to report under this section if they submit a notice to EPA under the National Emission Standard for Asbestos, 40 CFR 61.146, at least 10 days before they begin the asbestos abatement project and that notice clearly indicates that employees not covered by the OSHA Asbestos Standard or an Asbestos Standard adopted by a State as part of a State plan approved by OSHA will perform some or all of the asbestos abatement work.

(Approved by the Office of Management and Budget under the control number 2070–0072)

§ 763.125 Enforcement.

(a) Failure to comply with any provision of this Part is a violation of section 15 of the Act (15 U.S.C. 2614).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by section 11 of the Act (15 U.S.C. 2610) is a violation of section 15 of the Act (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(e) EPA may seek to enjoin an asbestos abatement project in violation of this Part, or take other actions under the authority of sections 7 of 17 of the Act (15 U.S.C. 2606 or 2616).

§ 763.126 Inspections.

EPA will conduct inspections under section 11 of the Act (15 U.S.C. 2610) to ensure compliance with this Part.

[FR Doc. 86–9190 Filed 4–24–86; 8:45 am]

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federal register

Friday
April 25, 1986

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

Tobacco Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: Pub. L. 99–198, sections 1161 and 1166, approved December 23, 1985 (Amendments to section 213 of the Dairy and Tobacco Adjustment Act of 1983) (7 U.S.C. 511r) requires that all flue-cured and burley tobacco offered for importation into the United States not contain any prohibited residue of any pesticide that has been cancelled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide and Rodenticide Act. Further, all flue-cured or burley tobacco permitted entry into the United States must be accompanied by a written identification of any and all end users or purchasers to whom the importer may transfer such imported tobacco. Finally, the law requires that the Secretary fix and collect fees to cover, as nearly as practicable, the costs of these additional services. It is proposed that the regulations be amended to provide for the testing and certification of imported tobacco.

DATE: Comments are due on or before May 27, 1986.

ADDRESS: Send comments on imported tobacco to the Director, Tobacco Division, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502, Annex Building, Washington, DC 20250. Comments will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, DC 20250, telephone (202) 447–2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend the regulations governing the inspection and grading of tobacco (7 CFR Part 29, Subpart B *et seq.*) to provide for the testing by the Department of imported flue-cured and burley tobacco for pesticide residues and to fix and collect fees for these services. These fees and charges would, as nearly as practicable, cover the cost of such services, including the administrative and supervisory costs customarily included by the Secretary in user fee calculations. The regulations would also be amended to provide for the identification of the end users of imported flue-cured and burley tobacco. The authority for these regulations is contained in Pub. L. 99–198, sections 1161 and 1166 (7 U.S.C. 511r) ("the Act") and the Tobacco Inspection Act (48 Stat. 731; 7 U.S.C. 511 *et seq.*). The proposed amendments are designed to implement the statutory provisions requiring testing of imported flue-cured and burley tobacco for pesticide residues and the identification of end users in a manner that, insofar as practicable, does not place an undue burden on the Federal Inspection Service or impede the expeditious movement of the commodity in commerce. The results of testing and data collected on volume, and end users will be kept confidential and released in a manner that will not reveal the identity of any individual entity. This information will be periodically compared with statistics released by other government agencies to insure that all imported flue-cured and burley tobacco is accounted for as required by the Act.

The Department currently inspects for grade and quality all tobacco offered for importation into the United States except oriental and cigar types. Most imported tobacco arrives in this country by vessel, typically in 40-foot containers which carry 90–99 packages weighing approximately 500 pounds each. Generally, these containers are transferred to a rail or truck carrier and transported to an inland port of entry where the tobacco is unloaded for warehousing, manipulation, or manufacturing. The majority of imported tobacco is initially stored in bonded warehouses. Shipments are identified by invoices and packing lists which give detailed accountings of the tobacco, including country of origin, weight, and company grade.

In proposing pesticide residue levels, the Department has relied upon research conducted by several land grant universities and the regulations of the Environmental Protection Agency found at 40 CFR Part 180.

It is proposed that all flue-cured and burley tobacco offered for importation into the United States, including tobacco entering foreign trade zones, but excluding transshipped tobacco, be subject to testing for pesticide residues and that information be collected for the identification of end users. The importer would be required to complete a Pesticide and End User Certification form at the time of importation. On the form the importer would certify either that the tobacco is free of prohibited pesticide residues, or that i. will not move in commerce until it is tested pursuant to these regulations and found to be free of prohibited pesticide residues. Tobacco certified as being free of prohibited pesticide residues would be subject only to random sampling and testing.

All imported flue-cured and burley tobacco would be assessed fees to cover the costs of sampling and testing under these regulations. The fee for sampling and testing imported flue-cured and burley tobacco in accordance with these regulations would initially be set at $.0010 per pound. Imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues would be subject to an additional fee of $.0030 per pound. These fees were determined after a thorough review of the procedures to be used, the anticipated volume to be sampled and tested and the number of staff hours necessary to provide and supervise the testing service. Since this is a new program, the costs actually incurred would be closely monitored during the startup phase. Based on this review, adjustments would be made in the fee as necessary.

The Act also contains provisions relating to domestically-produced flue-cured and burley tobacco. Regulations implementing these provisions will be published separately by the Agricultural Stabilization and Conservation Service (ASCS) before the openings of the flue-cured and burley sales seasons. It may be noted that existing law and regulations require that domestic producers of flue-cured and burley tobacco must certify that no banned pesticides have been used, and that approved pesticides have been used in accordance with label requirements.

These proposed rules have been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512–1 and have been determined to be "nonmajor" because they do not meet any of the criteria established for major rules under the Executive Order. Initial review of the regulations contained in 7 CFR Part 29 for need, currentness, clarity, and effectiveness has been completed. During the startup phase of this operation, the Department will closely monitor the procedures established in the final rule to insure that any problems which may arise are promptly addressed.

In compliance with the Office of Management and Budget (OMB) regulations, 5 CFR Part 1320 Controlling Paperwork Burdens on the Public, which implements the Paperwork Reduction Act of 1980, Pub. L. 96–511, the

information collection requirements contained in this proposed rule have submitted to OMB for review as prescribed in § 1320.13 Clearance of Collection of Information Requirements in Proposed Rules under Section 3504(h) of the Paperwork Reduction Act. Comments covering the information collection requirements contained in this proposed rule may be addressed to: The Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, AMS, USDA, Washington, DC 20503, Telephone: (202) 395–7313.

Additionally, in conformance with the provisions of Pub. L. 96–354, the Regulatory Flexibility Act, full consideration has been given to the potential economic impact upon small business of this proposed rule. A number of firms which are affected by these proposed regulations do not meet the definition of small business either because of their individual size or because of their dominant position in one or more marketing areas. The Administrator, Agricultural Marketing Service, has certified that these actions will have no significant economic impact upon all entities, small or large, and will not substantially affect the normal movement of the commodity in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal for imported tobacco may file them with the Director, Tobacco Division, Agricultural Marketing Service, Room 502 Annex Building, United States Department of Agriculture, Washington, DC 20250, not later than May 27, 1986.

List of Subjects in 7 CFR Part 29

Reporting and recordkeeping requirements, Tobacco.

It is proposed that the regulations at 7 CFR Part 29, Subpart B, be amended as follows:

1. The authority citation for 7 CFR Part 29 continues to read:

Authority: Sec. 19, 49 Stat. 734 as amended, 7 U.S.C. 511m; and Section 213, 97 Stat. 1149, as amended, 7 U.S.C. 511r.

§ 29.400 [Amended]

2. The heading of § 29.400 is revised to read as follows: *Inspection, Certification, and Testing of Imported Tobacco.*

3. Section 29.400 is redesignated as § 29.400(a) and a new paragraph (b) is added as follows:

(b) All flue-cured or burley tobacco, including stems, offered for importation into the United States, including tobacco entering foreign trade zones, but excluding transshipped tobacco, shall be accompanied by a pesticide and end user certification completed by the importer. Any flue-cured or burley tobacco that is not certified as being free of prohibited pesticide residues shall not be permitted entry into the United States until the Secretary has determined that the tobacco meets the pesticide residue requirements in these regulations.

§ 29.401 [Amended]

4. In § 29.401 the following definitions are added:

* * * * *

(m) *End User Certification.* A document issued by the Tobacco Division in a form approved by the Director containing a certification by the importer or subsequent purchaser to identify any and all end users of imported flue-cured or burley tobacco.

(n) *Pesticide.* Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, and any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(o) *Pesticide Certification.* A document issued by the Tobacco Division in a form approved by the Director containing a certification by the importer that flue-cured and burley tobacco offered for importation does not contain residue of any banned pesticide.

(p) *Banned Pesticide.* Any pesticide that has been cancelled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 *et seq.*), or has not been approved or sanctioned by the Environmental Protective Agency (EPA) for use on tobacco.

(q) *Stems.* The midribs or large central veins of tobacco leaves.

(r) *Pesticide Test Sample.* An official sample or samples, collected from a lot of tobacco by the Secretary of Agriculture for analysis by a certified chemist to ascertain the residue levels of banned pesticides.

(s) *Sample Identification Form.* A document approved by the Director that identifies and accompanies the sample to the testing facility on which the test results will be certified by a chemist in charge of testing.

(t) *Subsequent Purchaser.* Any entity that acquires ownership of tobacco after importation.

(u) *Testing.* The chemical analysis of a pesticide test sample to determine residue levels of banned pesticides.

(v) *End User.* A domestic manufacturer of cigarettes or other tobacco products; an entity that mixes, blends, processes, alters in any manner, or stores imported tobacco for export; or any individual that the Secretary may identify as making use of imported tobacco for the production of tobacco products.

(w) *Reexported.* Any imported tobacco not used to manufacture tobacco products that is subsequently exported.

(x) *Certified Chemist.* A person trained in chemistry who is qualified to make a written certification as to the composition and chemical properties of tobacco.

(y) *Blended.* Tobacco that is combined or mixed into a uniform product.

(z) *Leaves.* Whole, undivided tobacco leaves containing lamina and stem.

(aa) *Strips.* The sides of tobacco leaf from which the stem has been removed or a lot of tobacco composed of strips.

5. The following new §§ 29.425–29.431 are added:

§ 29.425 Submission and disposition of pesticide certification.

The importer shall complete a pesticide certification on a form approved by the Director for each lot of flue-cured or burley tobacco, including stems, offered for importation. The importer shall present the original and first copy of the certification to the inspector at the time the tobacco is inspected under the provisions of §§ 29.400–29.407 and keep the third copy for their records. The inspector shall forward the original to the Director and the first copy to the appropriate field office.

§ 29.426 Collection of pesticide test samples.

Any lot of tobacco not certified by the importer as being free of prohibited pesticide residues shall be sampled in sufficient detail to determine whether the lot conforms with the pesticide residue standards. Lots of imported tobacco certified by the importer shall be sampled on a random basis and tested to determine whether they conform with the pesticide residue standards.

§ 29.427 Pesticide residue standards.

(a) The maximum allowable residue levels expressed in total parts per million for the following specific pesticides are as follows:

DDT	1.5
TDE	1.0
TOXAPHENE	2.0
ENDRIN	.1
ALDRIN	.1
DIELDRIN	.1
HEPTACHLOR	.2
CHLORDANE	.3
EDB (Ethylene Dibromide)	.8

FORMOTHION	.2
TAMARON (Methamidophos)	.2
DBCP (Dibromocloropropane)	50.0
PERMETHRIN	.1

(b) The maximum allowable residue levels for any other banned pesticide shall be 4.0 times the generally recognized lowest detectable limit attainable expressed in parts per million.

§ 29.428 Identification of sample for testing.

Samples of imported tobacco shall be identified by the inspector on a form approved by the Director. The original and first copy shall accompany the sample to the designated testing facility. The third copy of the identification form will be sent to the Director. Upon the completion of testing the designated facility will complete the form and mail the original to the Director and retain the first copy for their records.

§ 29.429 Disposition of imported tobacco exceeding pesticide residue standards.

Within 10 days of the receipt of test results from pesticide test samples, the Director shall notify the importer or entity responsible for the lot of tobacco of the test results. If the test results indicate that the lot or any portion of the lot contains a banned pesticide exceeding the standards, the Director will notify the importer or entity responsible for the affected tobacco and the appropriate U.S. Customs officials that the tobacco cannot enter the United States. The importer or other entity shall notify the Director in writing of the methods by which the tobacco will be disposed of and provide 5 days advance notice of the time and place of final disposition. The Department will monitor the disposition procedures to verify that the tobacco has been accurately identified as to lot, kind, type, and grade. U.S. Customs regulations at 19 CFR 144.5(a) shall determine the time period allowed for final disposition.

§ 29.430 Appeals.

Appeals of test results for imported tobacco must be made in writing to the Director within 30 days from the receipt of notification. The statement must specify in detail the relief requested. The importer or entity requesting the appeal will bear the cost of any subsequent sampling and testing. Subsequent samples will be selected only from tobacco which is in the original package and from tobacco which has not been mixed, blended, or altered in any manner since the initial sampling.

§ 29.431 Submission and disposition of end user certification for imported tobacco.

The importer shall identify the end user or users of each lot of imported flue-cured and burley tobacco on a form approved by the Director. If the importer is unable to identify the end user or users at the time of importation, an amended certification shall be executed within 30 days or at such time as the subsequent purchasers or end users can be identified for any portion of the lot. Subsequent purchasers or end users so identified shall also complete an end user certification until the tobacco is used in the manufacture of tobacco products or is reexported. The original and first copy shall go to the Director or his representative and the importer or subsequent purchaser shall retain the third copy for their records.

§ 29.500 [Amended]

6. The heading of § 29.500 is revised to read as follows: *Fees and Charges for Inspection and Testing of Imported Tobacco.*

7. Existing § 29.500 is redesignated as § 29.500(a) and a new paragraph (b) is added as follows:

(b) The fee for sampling, testing and certification of imported flue-cured and burley tobacco for prohibited pesticide residues is $.0010 per pound, and shall be paid by the importer. The fee for testing imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues shall be an additional $.0030 per pound. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

Dated: April 23, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 86-9483 Filed 4-24-86; 10:03 am]

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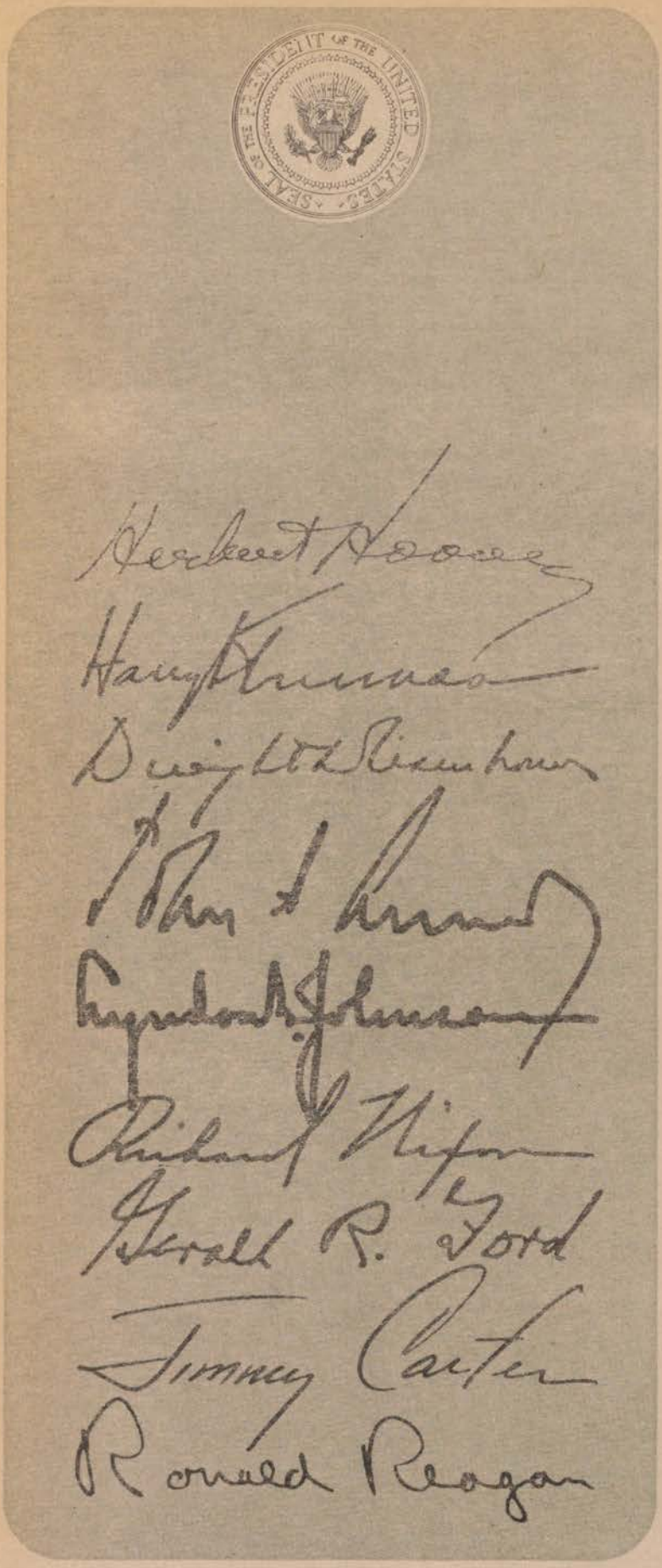

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